

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918

No. 288

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LOUIS H. ORR, APPELLANT,

vs.

HENRY M. ALLEN, EDWARD A. DEEDS, GORDON RENT-  
SCHLER, AND THE BOARD OF DIRECTORS OF THE  
MIAMI CONSERVANCY DISTRICT.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF OHIO.

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FILED OCTOBER 2, 1917.

(26,189)





(26,189)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 722.

LOUIS H. ORR, APPELLANT,

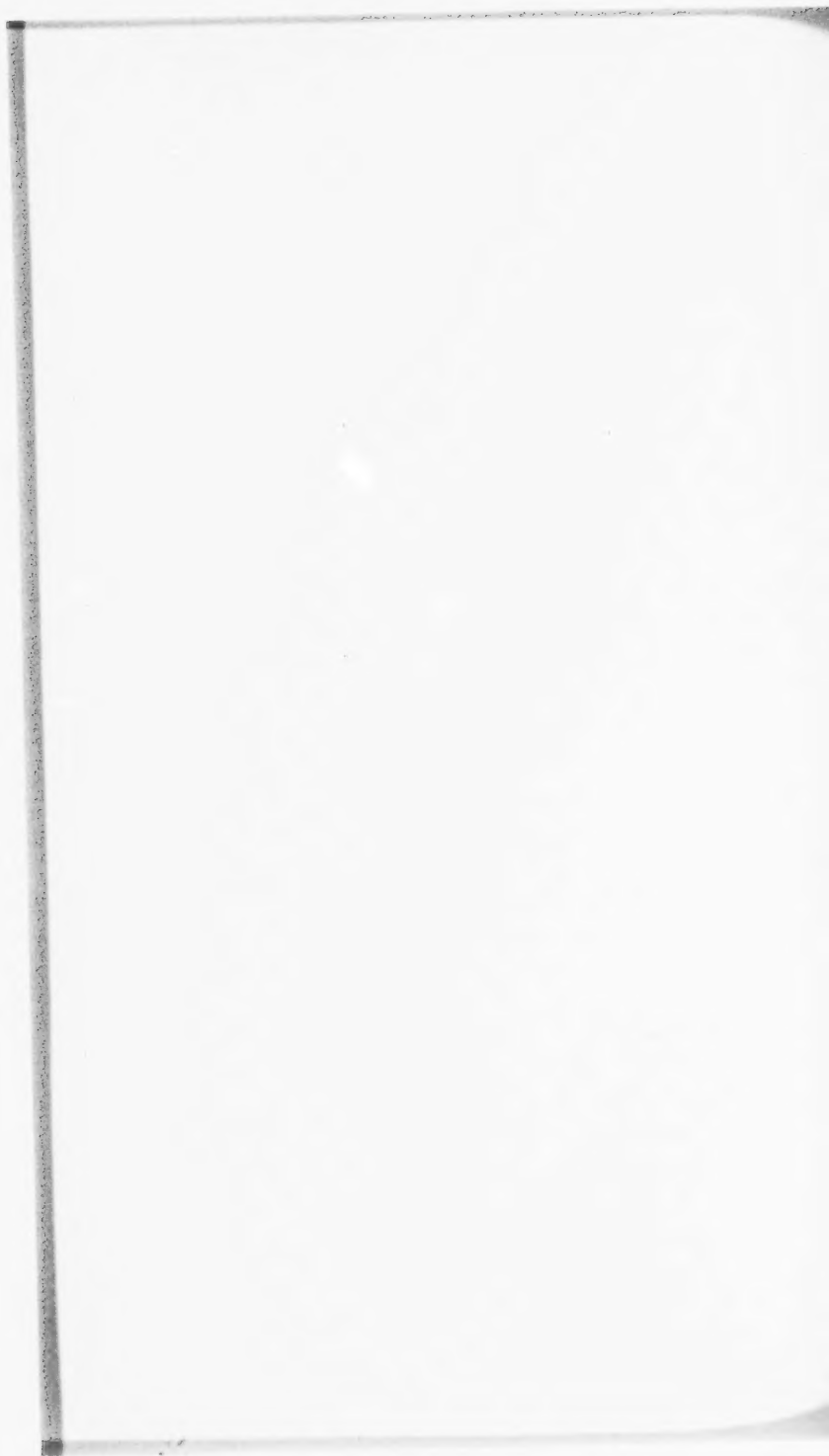
*vs.*

HENRY M. ALLEN, EDWARD A. DEEDS, GORDON RENT-  
SCHLER, AND THE BOARD OF DIRECTORS OF THE  
MIAMI CONSERVANCY DISTRICT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF OHIO.

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*Bill of Complaint.*

Filed June 12th, 1917.

In the District Court of the United States for the Southern District of Ohio, at Cincinnati.

In Equity.

No. 134.

LOUIS H. ORR, Complainant,

vs.

HENRY M. ALLEN, EDWARD A. DEEDS, GORDON RENTSCHLER, and  
The Board of Directors of the Miami Conservancy District, Defendants.

*Bill of Complaint.*

Louis H. Orr, a citizen of the State of California, residing at San Francisco, in the Northern District of California, brings this his Bill of Complaint against Henry M. Allen, Edward A. Deeds and Gordon Rentschler, citizens of Ohio, and inhabitants of the Western Division of the Southern District of Ohio, and the Board of Directors of the Miami Conservancy District, having its principal place of business in the City of Dayton, in the Western Division of the Southern District of Ohio, defendants; And, therefore, your orator complains and says:

First. That defendants, Henry M. Allen, Edward A. Deeds and Gordon Rentschler are the acting directors of "The Miami Conservancy District," under such authority, if any, as is conferred by an Act of the Legislature of Ohio known as House Bill No. 19, passed February 5th, 1914, and published at pages 13 to 64 inclusive, in Vol. 104, Laws of Ohio.

Second. Said Board of Directors, through its agents and servants, the appraisers for said District has appraised the amount of benefits for which certain real estate described as parts of inlots Nos. 35 and 36 in the City of Piqua and in the Western Division of the Southern District of Ohio, shall be taxed or assessed under such Act, at the sum of Twenty-nine Hundred and Eighty-eight Dollars (\$2,988.00) of which said property, the complainant, Louis H. Orr, is the sole owner, and, he says that said parts of inlots 35 and 36 aforesaid have been duly placed and now appear upon the General Tax Duplicate of Miami County, Ohio, at the assessed valuation of Forty-nine Thousand Eight Hundred and Fifty Dollars (\$49,850.00), and that said complainant is the sole owner in fee simple by record title of one hundred and sixty four acres of farming

land in Washington Township, Miami County, Ohio, which land has been duly placed and now appears upon the General Tax Duplicate of Miami County, Ohio, at the assessed valuation of Seventeen Thousand Four Hundred and ninety Dollars (\$17,490.00), an aggregate assessed valuation of real estate owned by complainant situate within Miami County, Ohio, amounting to Sixty-seven Thousand Three Hundred and Forty Dollars (\$67,340.00), and that the defendants have assumed authority under Section 43 of the Ohio Legislative Act herein complained of, to levy for so-called "Preliminary Expenses," three tenths of a mill on the assessed valuation thereof, \* \* \* to be used for the purpose of paying expenses up to the time money is received from the sale of bonds or otherwise," and that such three tenths of a mill upon said \$67,340.00, amounting to \$20.20 (Twenty Dollars and twenty cents), will be so levied and assessed against complainant and his said property in addition to said sum of \$2,988.00, making a total of Three Thousand and Eight Dollars (\$3,008.00).

Third. Said Board of Appraisers has appraised the amount of benefits for which the said County of Miami shall be taxed or assessed at the sum of Fifty-nine Thousand, Four Hundred and Six Dollars, and has appraised the amount of benefits for which the City of Piqua shall be so taxed or assessed as aforesaid at the sum of Three Hundred and Twenty-four Thousand and Five Hundred Dollars; for the payment of which he, with the other tax payers of the said City of Piqua, in said County of Miami, will be assessed or taxed and such properties encumbered with liens to secure the payment of warrants, bonds, and so forth, aggregating many hundreds of thousands of dollars, which warrants will be issued and which bonds will be issued and sold, to innocent holders for value, under the pretended authority, more particularly set forth in Sections 43 to 47 of said Act of the Ohio Legislature, unless defendants be restrained by an order of this court, and

Fifth. Complainant further says that the defendants in pursuance of Sections 42 et seq. of said Ohio Legislative Act, and in violation of the constitutional rights of complainant, will, unless a temporary restraining order and an interlocutory injunction herein be granted, incur and disburse for "preliminary expenses," and alleged improvements, from funds acquired by defendants, through the issue of warrants and the pledging and levying of such preliminary taxes and the issuing of bonds, thereby creating a prima facie lien upon all the property of complainant within the City of Piqua and Miami County, thereby clouding the titles thereto, to the great and irreparable injury of complainant as a tax payer of the City of Piqua and of the County of Miami.

Sixth. That the defendants have adopted plans for the construction of reservoirs and dams, to be constructed above and adjacent to the said properties of the complainants, which reservoirs and dams are totally unnecessary for the protection of any property in said

City of Piqua, or in said County of Miami, and that on the contrary, the construction of same would constitute a serious and continuing menace to the safety of the inhabitants and property of said city and county, and the property aforesaid of this

complainant, and would greatly detract from the value of said properties, for which damage this complainant, would have no remedy at law, since such Conservancy District and these defendants, as the Board of Directors of such District, are totally without funds and must continue to be totally without funds except such as have been, or may hereafter be collected under the provisions of such Act of the Ohio Legislature hereinbefore referred to and complained of, which Act is unconstitutional and void, and that Section 6 of said Act expressly denies complainant any remedy, and said Act denies to him the right of appeal from the order establishing said Miami Conservancy District, all in contravention of Article 2, Section 27, of the Constitution of Ohio; Article 1, Section 16, of same; Article 1, Section 19; Section 1 of Article 2, and Section 26 of Article 2 of the Constitution of Ohio, and Section 1 of Article 14 of the Constitution of the United States, guaranteeing equal protection to every suitor in judicial tribunals, under the provision of which Act of the Ohio Legislature the preliminary assessments and appraisal benefits herein complained of were made and such amounts of appraisals will be assessed with the other assessments therein provided for, and such assessments levied and such warrants issued and such bonds issued and sold, unless restrained by an order of this Court, all to the great and irreparable damage of complainant.

To the end, therefore, that your orator may have that relief which he can only obtain in a Court of Equity, and that the said defendants may answer the premises, he prays that his Bill may be heard and determined by three judges, of whom one at least shall be a

Justice of the Supreme Court of the United States, or a Circuit Judge, and the other two either Circuit or District Judges,

and that upon such hearing their Honors grant unto your orator their Writ of Injunction commanding said Henry M. Allen, Edward A. Deeds, Gordon Rentschler and the Board of Directors of the Miami Conservancy District, and all persons claiming to act under the authority, direction or control of the defendants, absolutely to desist and refrain from borrowing money by warrants or otherwise, and from levying assessments upon any of the real property of the complainant, upon which benefits have been appraised, or from levying any assessments against the City of Piqua, Ohio, or against Miami County, Ohio, until such time as their Honors appoint and direct an order herein; and that upon such hearing, the writ herein prayed for be made and confirmed until the final determination of this suit, and that thereupon the said injunction may be made perpetual; and further that as irreparable loss or damage will result to the complainant unless a temporary restraining order is granted he prays that the Honorable Howard Hollister District Judge in the District Court of the United States, may grant such temporary restraining order forthwith, before such hearing and determination of the application for an interlocutory injunction; and further that subpoena may forthwith issue out of this Honorable Court for each of said defendants, directed to the marshal, returnable according to law.

LONG, BELL & SMITH,

*Complainant's Solicitors.*

STATE OF OHIO,  
*Miami County, ss:*

Louis H. Orr, being first duly sworn, deposes and says that he is the complainant named in the above and foregoing Bill, and that the facts stated and allegations contained therein are true.

LOUIS H. ORR.

Sworn to before me by the said Louis H. Orr, and by him  
6 signed in my presence, this 11th day of June, A. D. 1917.

[SEAL.]

E. M. BELL,

*Notary Public, Miami County, Ohio.*

7

*Answer.*

Filed June 28, 1917.

In the District Court of the United States for the Southern District  
of Ohio, at Cincinnati.

In Equity.

No. 134.

LOUIS H. ORR, Complainant,

vs.

HENRY M. ALLEN, EDWARD A. DEEDS, GORDON RENTSCHLER, and  
The Board of Directors of the Miami Conservancy District, De-  
fendants.

*Answer.*

The defendants admit the citizenship of the complainant and their own, and the character and location of the conservancy district, and their official connection with it as directors. It is a public corporation invested with many powers, among them the power of eminent domain and assessment in aid of the public safety. The district is composed of a narrow strip of land on either side of the Miami River and its tributaries, located in the counties of Hamilton, Butler, Warren, Greene, Preble, Montgomery, Clark, Miami and Shelby. The cities of Hamilton, Middletown, Dayton, Troy and Piqua, and the villages of Franklin and Miamisburg are in the district, said municipalities having been more or less damaged by the flood of 1913.

They deny that the property of the complainant, which they admit to be his, or the city of Piqua or the County of Miami have been "assessed" for any sum whatever, or that any "preliminary expense tax" has been or will be levied, or was ever in contemplation. Such expenses were paid in full long ago. They deny



8 that the amount in controversy is the sum of Three Thousand and Six (\$3,006.00) Dollars, or is in excess of the probable sum of Twelve to Fifteen Hundred Dollars.

They admit the adoption of a plan for the construction of dams or detention reservoirs, for the withholding of flood waters in the Miami and other rivers tributary to it, for the protection of life and property in the valley, and that one will be located above Piqua and the property of the complainant. They deny it will be a menace to the community, or a detriment to the value of the same, but on the contrary a great benefit. This has been adjudicated in the State Court. They deny that the conservancy district will be without funds to meet any damage claims that may be awarded against it. They deny that any action taken by them will result in irreparable damage to complainant.

And defendants represent to the Court that causes of action are improperly joined, and if properly joined that there is a defect of parties defendant.

Defendants aver that the conservancy district was established according to law, after proper and full notice in each county, on the 28 day of June, 1915, and that since that time and before the complainant brought his suit many thousands of dollars have been expended by it in the prosecution of the engineering and appraisal work, and many other similar expenses have been incurred and paid.

They aver further that the present situation of the case in the state court is as follows: The appraisers appointed under the law have made their final report in May, 1917, as to the value of property that is to be taken for the use of the district, and as to the total benefits that will be realized by each individual, public utility, or public corporation, by the construction of the work. Public notice of the filing has been given, the Conservancy Court has met and is now considering the objections made by those who were not

9 satisfied with the report of the appraisers. Among those who have filed objections to the report of the appraisers are the complainant, the City of Piqua and the County Commissioners of Miami County. All these complainants are set down for hearing on or after July 23, A. D. 1917. Complainant has a complete and adequate remedy at law. No levy can be made upon his property until his objection is heard and finally determined, as provided in the law.

Defendants aver that the total amount of benefits reported in the whole district is about Seventy-seven Million Dollars. In the Official Plan the engineer estimated that the cost will be about Twenty-three Million Dollars. According to present unofficial estimates this cost may be increased to Twenty-seven Million Dollars, in view of the higher cost of labor and material. No contracts for the work have been let or made, and there is no probability that any work will be done upon the dam referred to by the complainant within twelve months, so as to effect in any way his supposed rights.

Wherefore, defendants pray that the complaint may be dismissed at the cost of the plaintiff.

O. B. BROWN,

J. A. McMAHON,

*Attorneys for Defendants.*

STATE OF OHIO,  
*Montgomery County, ss:*

Edward A. Deeds, being first duly sworn, says that he is one of the hereinabove named defendants, and that the facts stated in the foregoing answer are true.

EDWARD A. DEEDS.

Sworn to before me by the said Edward A. Deeds and by  
10 him subscribed in my presence this 25th day of June, 1917.  
[SEAL.] HARRY L. MUNGER,  
*Notary Public in and for Montgomery County, Ohio.*

11 *Replication.*

Filed July 2, 1917.

In the District Court of the United States for the Southern District  
of Ohio.

No. 134.

LOUIS H. ORR

VS.

HENRY M. ALLEN et al.

Comes the Complainant and in reply to the answer filed herein says that the proceedings which he seeks to enjoin are not limited to the first assessment threatened against his property, but that confiscation of his said property is threatened by the proceedings which have been commenced under the provisions of the law complained of as unconstitutional, and that the damages so threatened to him are only limited if at all, by the value of his said properties which he alleges to be many Thousands of Dollars in excess of Three Thousand Dollars.

That the defendants have caused an appraisal of benefits to be made against the City of Piqua amounting to \$324,500, of which his said property in the City of Piqua of the taxable valuation of \$49,850 sustains the proportion of twenty-seven ten thousandths to the total tax duplicate value of all property, real and personal in said City of Piqua, causing his said property in the City of Piqua to bear a share amounting to \$876.15 out of said total appraisal of \$324,500, against said City, or a total appraisal against his said property in said City of \$3,864.15 together with such proportion of the total assessment against Miami County which his two  
12 tracts bear to the aggregate tax duplicate valuation of all property in Miami County, and in addition to the foregoing items that the alleged authorized levy of three-tenths of a mill upon the tax valuation, \$67,340. of his property in Miami County would amount to \$20.20.

That he admits the allegations of the answer as to the filing of exceptions in the Conservancy Court but says that since said answer was filed he has withdrawn his exceptions in that Court.

He says further that the act complained of by Sections 48 and 49 thereof provides for an annual levy of a Conservancy Maintenance Assessment and that Section 54 of said Act creates a lien on all of his said properties for such taxes or assessments and for the penalties, costs of suits and attorneys' fees upon delinquent taxes which lien is stipulated to inure to the bond holders.

And he denies each and every allegation of the answer except such as are admitted by his complaint or in this plea.

LOUIS H. ORR,  
By LONG, BELL & SMITH,  
*His Solicitors.*

STATE OF OHIO,

*Miami County, ss:*

Robert J. Smith being first duly sworn says that the complainant is a non-resident of the State of Ohio and is absent from and not in the Southern District of Ohio; and that he is one of the Solicitors for the Complainant in this action, and that the facts stated and allegations contained in the foregoing plea are within his personal knowledge and are true.

ROBERT J. SMITH.

Sworn to before me by said Robt. J. Smith and by him subscribed in my presence this 30th day of June, A. D. 1917.

[SEAL.]

H. N. LILLEY,  
*Notary Public.*

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*Opinion.*

Filed August 9, 1917.

District Court of the United States, Southern District of Ohio, Western Division.

No. 134.

LOUIS H. ORR, Complainant,

vs.

HARRY M. ALLEN, EDWARD A. DEEDS, GORDON RENTSCHLER, and  
The Board of Directors of the Miami Conservancy District, Defendants.

Before Warrington, Circuit Judge, and Cochran and Hollister, District Judges.

HOLLISTER, *District Judge:*

This action, brought by Louis H. Orr, a citizen of California, and owner of real estate in the City of Piqua, Miami County, Ohio, and

farming land in Miami County, against the defendants individually and as the Board of Directors of the Miami Conservancy District, challenges the constitutionality, both with respect to the Constitution of Ohio and the Constitution of the United States, of the Act of the general assembly passed February 5, 1914, entitled: "To prevent floods, to protect cities, villages farms and highways from inundation, and to authorize the organization of drainage and conservation districts," known by legislative direction as the "Conservancy Act of Ohio."<sup>1</sup>

The purpose of this legislation was to provide against and to prevent the recurrence of such a calamity as befell the inhabitants of the valley of the Great Miami River in March, 1913, growing  
14 out of an unprecedented flood in that river and its tributaries, resulting not only in the loss of many lives and the destruction of property, but, by possible recurrence, threatening the future well-being and prosperity of the inhabitants and owners of property in that valley for all time to come. It was a cloud upon the health, happiness and prosperity of one of the most thriving and promising sections of the State. So threatening was the situation, that the general assembly of Ohio gave expression to public sentiment not only in the enactment of the provisions of this law with its appropriate title, but by declaring:<sup>2</sup>

This act is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and safety. Such necessity exists by reason of the inadequacy of the present drainage system of the state to carry off unusual rainfalls in a proper and safe manner, as shown by the disastrous floods of March, 1913, which may occur again at any time in the near future with a like unfortunate result in loss of life and property. The existing laws of the state are not adequate to meet this emergency."

While it is true that knowledge of a recurrence of such a disaster resides only with Omniscience, yet the finite mind with knowledge gained by experience and observation is endowed with sufficient foresight to seek to prevent and to insure against, if possible, a similar calamity in the future.

Whether such legislation is an exercise of police power, or was enacted under express constitutional authority, is not important, and we agree with Judge Wanamaker in what he says in that behalf,<sup>3</sup> for  
15 the amendment of the Constitution of Ohio adopted September 3, 1912, with seeming prescience declared:<sup>4</sup>

"Laws may be passed \* \* \* to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formation of drainage and conservation districts \* \* \*"

That it is in the power of the State to require local improvements to be made which are essential to the health, comfort, safety and

<sup>1</sup>104 Ohio Laws 13-64.

<sup>2</sup>Sec. 79.

<sup>3</sup>Miami County v. Dayton, 92 Ohio St. 215, 224.

<sup>4</sup>Article II, section 36.

prosperity of the community is not open to doubt, and for such purpose provision may be made for many such objects, including draining marshy and malarious districts, irrigating arid lands, and the construction of levees to prevent inundations, and the legislature may prescribe the way in which the means to meet the cost of the authorized improvement shall be raised, whether by general taxation or by laying the burden upon the district specially benefited.<sup>5</sup>

The power of the State, unless restrained by provisions of the Constitution of the United States, as to the mode, form and extent of taxation imposed to meet the cost, is unlimited where the subjects to which it applies are within the State's jurisdiction.<sup>6</sup>

While no state conservancy act exactly like this has been passed upon by the Supreme Court of the United States, yet its general features and the method of operation under it have received 16 the sanction of that court,<sup>7</sup> and the existence of the power has been affirmed in decisions too numerous to cite, though the method of its exercise has sometimes been successfully questioned as being in contravention of some provisions of the Constitution of the United States.

While the existence of the emergency, as declared by the general assembly, is not conclusive,<sup>8</sup> and the Act itself provides how that question of fact may be raised, yet the opinion of the representatives of the people of Ohio has great weight. The Act has been construed and its validity, except as to three clauses hereinafter referred to, has been upheld by the Supreme Court of Ohio, both from the view of the Constitution of Ohio and of the Constitution of the United States.<sup>9</sup> This was an affirmation of the original finding by the court of common pleas that the improvement contemplated was a public necessity and that public safety, health, convenience and welfare would be promoted by the organization of the conservancy district substantially as prayed for in the petition authorized by the Act to be filed in that Court. While the views of the general assembly and the decision of the supreme court are not conclusive upon the courts of the United States on the question of the public character of the use to which private property is to be appropriated and assessments made for the cost of public works, yet State action on the subject is accorded the highest respect.<sup>10</sup>

From what we have said it clearly appears that we are of opinion that the land to be taken and the assessments for the cost of this improvement are for a highly important public service and use, 17 and we are in entire accord with the views of the general assembly and of the courts of Ohio on the subject; and also,

<sup>5</sup>Hagar v. Reclamation District, 111 U. S. 761, 704, 705; County of Mobile v. Kimball, 102 U. S. 691, 704.

<sup>6</sup>State Tax on Foreign-Held Bonds, 15 Wall. 300, 319.

<sup>7</sup>O'Neill v. Leamer, 239 U. S. 244; Houck v. Little River District, 239 U. S. 234; Wurts v. Hoagland, 114 U. S. 606; Hagar v. Reclamation District, 111 U. S. 701.

<sup>8</sup>Miami County v. Dayton, 92 Ohio St. 215.

<sup>9</sup>Miami County v. Dayton, 92 Ohio St. 215.

<sup>10</sup>Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 112, 160; O'Neill v. Leamer, 239 U. S. 244, 253.

on the general subject, with the views of the supreme court of Nebraska<sup>11</sup> approved by the Supreme Court of the United States.<sup>12</sup>

"In our opinion it is too late in the day to contend that the irrigation of arid lands, the straightening and improvement of water courses, the building of levees and the draining of swamp and overflowed lands for the improvement of the health and comfort of the community, and the reclamation of waste places and the promotion of agriculture, are not all and every of them subjects of general and public concern, the promotion and regulation of which are among the most important of governmental powers, duties and functions."

And we see no difference in principle between legislation such as this and legislation prescribing a system for reclaiming swamp lands when essential to the health and prosperity of a community and laying the burden of doing it upon districts and persons benefited, or for draining low and marshy lands or for irrigating large tracts of arid land or for taking lands for public highways or for constructing levees along the banks of rivers to prevent inundations.<sup>13</sup> In fact and in law, every substantial feature of this Act as it is now before this Court, so far as questions arising under the Constitution of the United States are concerned, has received the sanction of the supreme court of the United States in the cases referred to in the margin.

We have been content with referring to the volume of the Ohio Laws in which the Act may be found, because its great length  
18 forbids detailed statement. A brief statement of the Act and the parts particularly objected to may be made:

The court of common pleas of any county is authorized to establish conservancy districts for the purpose of preventing floods; regulating streams and channels by changing, widening and deepening same; of reclaiming or of filling wet and overflowed lands; of providing for irrigation where it may be needed; of regulating the flow of streams; of diverting, straightening, widening, deepening and changing water courses; to build reservoirs, canals, levees, walls, embankments, bridges or dams, and to maintain, operate and repair any such construction, and to do all things necessary for the fulfillment of the purposes of the Act. Before doing so, a petition shall be filed in the office of the clerk, signed either by five hundred freeholders, or a majority of the freeholders, or by owners of more than half of the property in size, acreage or value within the limits of the territory to be organized into the district and which petition may be signed by the governing body of any corporation within, or partly within, the proposed dis-

<sup>11</sup>Neal v. Vansickle, 72 Neb. 105; Drainage District v. Richardson County, 86 Neb. 355.

<sup>12</sup>O'Neill v. Leamer, 239 U. S. 244, 252, 253.

<sup>13</sup>Hagar v. Reclamation District, 111 U. S. 701; Wurts v. Hongland, 114 U. S. 606; Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 112; Goodrich v. Detroit, 184 U. S. 432; O'Neill v. Leamer, 239 U. S. 244; Houck v. Little River District, 239 U. S. 254.



trict, or by any city, or cities interested, in some degree, in the improvement. The petition shall contain, among other things, the statement of the necessity of the proposed work, and that it will be conducive to the public health, safety, convenience or welfare. Notice of the pendency of the petition and of the time and place of the hearing shall be given by publication and answers may be filed by objectors, and when at issue, the case shall be advanced for hearing.

If the Court is of opinion that the purposes of the Act would be subserved by creating a conservancy district, the court shall, after disposing of all objections as justice and equity require by its  
 19 recorded findings and adjudication of all questions of jurisdiction, declare the district organized and give it a corporate name. The Court shall thereupon appoint three directors, whose duty it is to formulate a plan, including maps, profiles, etc., so as to describe the work; furnish an estimate of cost with specifications and designate what land is to be taken. They must report what lands will be benefited. The plan is open to inspection, and a hearing is provided for upon notice given in each county. Upon the hearing the directors shall adopt the plan if no valid objections appear. After its adoption any person may object and be heard by the court, which may adopt, reject, or refer the plan back for further action.

After the adoption of a plan, three appraisers recommended by the directors, are to be appointed by the court who shall value the land or other property to be acquired and appraise all benefits that may accrue to land by reason of the improvement. Appropriate hearings are provided for objections by any person or persons; counties, cities, villages and townships may be assessed as corporate bodies, and the assessments against them are to be collected and paid by general levy upon all the taxable property in the political subdivision as any ordinary debt. An appraisal record must be kept and show action of the appraisers and the amounts of damages awarded to each land owner whose property is appropriated and  
 amounts assessed against each property benefited. Any person dissatisfied with the award of damages, or the assessment of benefits may appeal to the court and, upon an unsatisfactory finding, he may appeal to the court of common pleas of the county in which his land is situated. If the question of damages is involved the  
 20 directors shall file proceedings in condemnation, or if the assessment for benefits is resisted, an inquiry into benefits in the county in which the land is situated, and the land owner is entitled to have those questions determined by a jury in his own county.

The land is not subject to a lien for the assessment until the owner's appeal has been determined and a certificate filed in the auditor's office and the bonds to be issued are not a lien upon the land in the district, but upon the assessment as finally made and established. In the event that benefits are less than the costs the court may reject the plan, or refer it back to the directors. Provision is made for the constitution of the court.

Before taking up the particular parts of the Act claimed to be unconstitutional in themselves, as well as affecting the constitutionality of the entire Act, it may be well to clear the way by disposing of some preliminary considerations:

1. Defendant's claim of want of jurisdiction on the ground that the amount involved is not sufficient to confer jurisdiction.

Upon complainant's property in the City of Piqua assessed for taxation at \$49,850.00, the bill alleges that defendants have caused an appraisal of benefits to be made amounting to \$2,988.00. Complainant says he owns farming property in Miami County assessed for taxation at \$17,490.00 and that defendants have caused an appraisal of benefits to the County of \$59,406.00, of which complainant's farming property must sustain its proportionate share. He does not set out what that share is. He alleges that the defendants have caused an appraisal of benefits to be certified against the City of Piqua in the sum of \$324,500.00 of which his property must bear its proportionate share amounting to \$876.15, and that the item of

21 three-tenths of a mill provided for in section 43 of the Act upon his property in Miami County will amount to \$20.20.

These make a total of \$3,864.15, together with such proportionate share his land may have to bear to the total amount assessed against Miami County.

The defendants say that the assessment when finally made will not amount to over \$1,500.00. It would seem that the bill of complaint shows a sufficient jurisdictional amount, and it is not denied that the appraisals as made by the appraisers of complainant's real estate in Piqua and the assessments made against the City of Piqua are as stated. We shall assume for the purposes of this case that the amount in controversy is sufficient to confer jurisdiction.

2. The defendants, while not denying that the appraisements are as stated, yet aver that the action is premature in that under the provisions of the Act the complainant, the City of Piqua, and Miami County, can appeal to the court of common pleas from the decision of the appraisers; that their appeal is now pending and that the court was at the time the case was heard engaged in hearing such appeals. Since the bill of complaint attacks the constitutionality of the whole Act as against provisions of the Constitution of the United States, as, under the guise of taxation, assessing lands for other than a public use, and as everything done under the Act would be futile if that contention prevails, and, since the reports of the appraisers are good until set aside, we shall assume for the purposes of this case that this action has not been prematurely brought.

3. We shall also assume, upon the statement of counsel for the defendants at the trial that the averment in their answer that causes of action are improperly joined, and, if properly joined, there is a defect of parties defendant, is withdrawn, and is not open for consideration here.

22 4. Provisions such as part of section 53 and part of section 54, for attorney's fees as a part of the costs in certain cases, the supreme court of Ohio condemned long before the

Act was passed,<sup>14</sup> and held since that the part of section 6 providing for appeal from an order refusing to establish the conservancy district to the court of appeals of the county is void, because repugnant to section 6, article IV of the Constitution of Ohio of 1912.<sup>15</sup> But in all other respects, that court has established the validity of the Act with respect to the Constitution of Ohio, and also found the Act not to be repugnant to the Constitution of the United States.<sup>16</sup>

The parts of those sections having thus been declared to be repugnant to the Constitution of Ohio, they are to be regarded as separable from the rest of the Act, and in effect as eliminated from it. As thus construed, therefore, the Act stands established in its relation to the State Constitution.

Required, as we are, to follow the decisions of a court of last resort in a State upon the construction of legislation of the State and its validity with respect to the constitution of the State,<sup>17</sup> we hold the Act as it now stands to be in conformity with the Constitution of Ohio, and now discuss it in its relation to the Constitution of the United States; for, whatever views the state court may have expressed on that subject, the courts of the United States must decide according to their own convictions.<sup>18</sup>

23 The claim, as we understand it, is that the Act is in contravention of the fourteenth amendment of the Constitution of the United States in that it is a taking of private property without due process of law and that it denies the complainant the equal protection of the laws.

We have said, speaking generally of this Act, that it was within the power of the State, for the purposes contemplated, to carry out a project such as this by appropriate legislation; to charge the cost against the property specially benefited, and to make that charge a lien upon the assessments for benefits. It is only required that the costs be apportioned in a just and reasonable mode according to benefits.<sup>19</sup> Respect must be had to the cause and object of the taking of private property. If palpably arbitrary and a plain abuse, oppressive and unjust, it may be declared to be not due process of law.<sup>20</sup> The assessment upon private property must be for a public use, whether it be for the whole State or some limited portion of the community.<sup>21</sup> And it is not essential that the entire community, or even any considerable portion thereof should directly enjoy or participate in an improvement in order to constitute a public use.<sup>22</sup>

We regard the public nature of this legislation completely established under the decisions of the Supreme Court of the United States

<sup>14</sup>Coal Co. v. Rosser, 53 Ohio St. 12.

<sup>15</sup>Snyder v. Deeds, 91 Ohio St. 407.

<sup>16</sup>Miami County v. Dayton, 92 Ohio St. 212.

<sup>17</sup>Hagar v. Reclamation District, 111 U. S. 701, 704; Irrigation District v. Bradley, 164 U. S. 112, 154, and numerous cases. This is elementary. Sioux City, etc., Co. v. Trust Co., 173 U. S. 99, 111.

<sup>18</sup>Irrigation District v. Bradley, 112, 159.

<sup>19</sup>Hagar v. Reclamation District, 111 U. S. 701, 705.

<sup>20</sup>Davidson v. New Orleans, 96 U. S. 97, 104; Houck v. Little River District, 20 U. S. 254, 262, and cases cited.

<sup>21</sup>Davidson v. New Orleans, 96 U. S. 97; Fallbrook Irrigation District v. Bradley, 164 U. S. 112, 157, 158.

<sup>22</sup>Irrigation District v. Bradley, 164 U. S. 112, 162.

in analogous cases; but, were it not so, we would think, and  
 24 now declare, that the public character of this Act and benefits  
 to accrue under the proceedings taken by virtue of it, cannot be doubted. Such legislation is not arbitrary, nor unjust to the individual, for his absolute right as owner of land must yield to a certain extent or be modified by corresponding rights of other owners, for what is declared upon the whole to be for the public use.<sup>23</sup> The Act shows great care in providing notice to the land owner and a hearing upon every essential question of fact involving the necessity for the proceedings under the Act, the propriety of establishing a conservancy district, the amount of the benefits to accrue to each parcel of land or governmental subdivision, and the assessment therefor. The law provides a mode and form of testing all of the land owner's rights in the ordinary course of justice before a Court of competent jurisdiction. Respect is had to the cause and object of the assessment. The statute is applicable to all lands of the same general character. All the land owners in the district have, to a certain extent, a common interest. The improvement cannot be accomplished without the concurrence of all, or nearly all, and the improvement is made useful to all at their joint expense.

This is due process of law.<sup>24</sup>

We consider now the objections made to specific clauses claimed to be in contravention of the fourteenth amendment.

25 1. Section 6 provides for filing objections on or before the date set for the hearing of the cause by any owner of real property in the proposed district who has not signed a petition and who wishes to object to the organization and incorporation of the district; and further:

"If the Court finds that the property set out in said petition should not be incorporated into a district, it shall dismiss said proceeding and adjudge the costs against the signers of the petition, in the proportion of the interest represented by them. Any petitioner may, within twenty days after the refusal, appeal from an order refusing to establish such district, to the court of appeals of said county, upon giving bond in a sum to be fixed by the Court.

"After an order is entered establishing the district, such order shall be deemed final and binding upon the real property within the district and shall finally and conclusively establish the regular organization of the said district against all persons except the State of Ohio upon suit commenced by the attorney general."

It is provided in section 38, among other things:

"The board of directors of any district organized under the terms of this act shall have the right to appeal from any order of the court of Common Pleas made in any proceeding under this act, not requiring the intervention of a jury."

<sup>23</sup>Fallbrook Irrigation District v. Bradley, 164 U. S. 112, 163.

<sup>24</sup>Davidson v. New Orleans, 96 U. S. 97, 104; Hagar v. Reclamation District, 111 U. S. 701, 710; Kelly v. Pittsburgh, 104 U. S. 78; Wurts v. Hoagland, 115 U. S. 605, 615; Winona, etc., Land Co. v. Minnesota, 159 U. S. 526, 537; Fallbrook Irrigation District v. Bradley, 164 U. S. 112, 157, 158; Goodrich v. Detroit, 184 U. S. 432, 434; Houck v. Little River District, 239 U. S. 254, 262.

The constitutional defect claimed in these provisions is that complainant is denied the equal protection of the laws, in that appeals by the petitioner, or the directors, as the case may be, are provided for, while no provision is made for appeals by an objector. This is not a question for our consideration, for the supreme court of Ohio has decided<sup>25</sup> that the portion of the sixth section which provides for appeal by petitioners from an order refusing to establish the district to the court of appeals of the county upon giving bond, is repugnant to section 6, article IV of the Constitution of Ohio of

1912. Necessarily the part of section 38 referred to falls  
26 within the condemnation of that part of section 6. That court also said<sup>26</sup> that since the appeal clause in the Act was unconstitutional section 12247 Ohio Gen. Code providing for reversals of judgments or final orders of the common pleas, for error appearing upon the record, was sufficient authority and was broad enough, under section 6, Article IV of the Constitution of Ohio of 1912, to cover proceedings in error from decisions of the common pleas under the provisions of the conservancy act.

The result is that the clause in section 6, and necessarily that part of section 38 complained of, are of no more force than if they had never been enacted, and the right to proceed by error is open either to the petitioners or the objectors. The objectors are not, therefore, denied the equal protection of the laws, and complainant's claim in that behalf is without foundation.

2. It is claimed that the fourth paragraph of section 3 of the Act permits the taking of complainant's property without due process of law.

Section 3 provides for the filing of a petition signed by five hundred freeholders, etc., as hereinbefore stated, and—

"Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on said petition shall be considered by the court the same as though filed with the first petition placed on file."

Without discussing the reasons urged by complainant why this clause is fatal in itself and to the entire Act, it is sufficient to say that what was contemplated by section 3 was evidently that, since it would obviously be important to obtain as many signatures to the

main petition as possible, duplicates of the petition or similar  
27 petitions might also be filed and should be heard together as if they were one, and all of them filed prior to the hearing on the main petition should be considered the same as though filed when it was.

And section 5 provides that immediately after the filing of such petition (the main petition) notice shall be given, in the way and form provided, of its pendency and the time and place of hearing. Manifestly, the petitions are all alike, or substantially alike, and must set forth, among other things provided, a general description of the purposes of the contemplated improvement and what territory

<sup>25</sup>Snyder v. Deeds, 91 Ohio St. 407.

<sup>26</sup>Miami County v. City of Dayton, 92 Ohio St. 215, 218.

is to be included in the proposed district. It is true, that a similar or duplicate copy of the main petition might be filed, say the day, before the hearing on the main petition, and no specific notice will be given on such a petition of its pendency, or the time and place of hearing thereon; but notice of the pendency of the main petition, and the time and place of its hearing is notice to every land owner within the proposed district of the proceedings to include his land. It would make no difference whether he had notice on other petitions filed after notice on the main petition was given or not, for there can be no doubt that he had constructive notice when publication was made on the main petition, of its pendency and the time and place of hearing. Complainant's contention in this behalf is without merit.

3. The claim that section 34 of the conservancy act, second paragraph, providing—

“The appeal shall be from the award of compensation or damages or benefits, or one or more of them, but from no other part of the decree of the court.”

—infringes some (not specified) constitutional right of complainant, has no foundation.

In as much as the objector has, as already shown, the opportunity of contesting the validity of the law by hearing in the common pleas on the questions of public purpose and benefit of the Act and the propriety of establishing the district, and may prosecute error if he desires, there seems to be no reason why he should have a further appeal on that subject when the award of damages or benefits, as the case may be, is made. He is given an appeal from such award, and may have a jury to determine those questions. This is a complete answer to complainant's contention.

4. The third paragraph of section 12 is complained of as being a denial of the equal protection of the laws in the provision that if “any person or persons object” to the official plan, such person or persons may file their objections, for which a day for hearing before the court must be fixed, and the court shall hear the objections and adopt, reject, or refer back the plan to the board of directors. The point is sought to be made that in the first section of the Act it is said that the term “Person,” when not otherwise specified, shall mean person, firm, copartnership, association or corporation other than county, township, city, village or other political subdivision; and, the right of objection is, therefore, denied all others except a person or persons.

Passing the fact that plaintiff in error in the case in 92 Ohio St. 215, hereinbefore referred to, was the County of Miami, in which case the validity of the Act was sustained, showing that practically, at least, the County of Miami could and did prosecute error, if it thought, as it did, itself aggrieved, it is only necessary to say in disposing of this objection that the remedy of injunction in equity is extended only to one who may be injured if the remedy is withheld.

Even if it were true (and we do not intend so to decide) that counties, townships, cities and villages could not prosecute error, yet the complainant can do so. He can show no ir-



reparable injury, for at law he can recover for taxes illegally imposed. The Supreme Court of the United States have declared it to be settled that although a law may be unconstitutional a party is not entitled to relief by injunction against proceedings in compliance therewith unless it appears he has no adequate remedy by the ordinary processes of the law, or that the case falls under some recognized head of equity jurisdiction. Inadequacy of remedy at law, exists, they say, where the case made demands preventive relief, as for instance, the prevention of multiplicity of suits or the prevention of irreparable injury.<sup>27</sup> Moreover, the complainant, at least, is amply protected under the Act itself, and he is in no position to complain because somebody else is denied relief. Injunction will not issue at the instance of a complainant who will suffer no injury by the acts complained of.<sup>28</sup>

5. The objection is made that section 43, third paragraph, providing for a levy upon the property in the district of a tax not to exceed three-tenths of a mill on the assessed valuation of the property for the purpose of paying the preliminary expenses, and if such expenses have already been paid in whole or in part from other sources they may be repaid from the receipts of the levy, is violative of the fourteenth amendment; but the basis of the claim does not appear.

30 However, the straight levy of three-tenths of a mill on the real estate for the purposes indicated is a proper exercise of the power of taxation, both under the Constitution of Ohio<sup>29</sup> and under the Constitution of the United States.<sup>30</sup>

It is claimed that the word "property" in the third paragraph of section 43 necessarily means both real and personal property, and that personal property cannot be made the subject of an assessment for the purposes of such an act as this. We are not called on to determine the propriety of this contention for the reason that the Supreme Court of Ohio,<sup>31</sup> construing the Act, held that the word "tax" used in the Act was intended to be "assessment" as that is understood in Ohio when special and local improvements are contemplated, and that the assessment is to be made with reference to benefits and burdens upon real estate. If we were disposed to disagree, and we by no means intend to be so understood, we are required, nevertheless, to follow the state court in this construction.

6. We see no valid objection to that part of section 46 providing that when a land owner has paid the entire assessment in full upon an appraisal of benefits to his property he may nevertheless be assessed for purposes of maintenance; or that part of section 47 providing for additional levies as may be necessary to pay the principal and interest of bonds. In principle, this is the same as the three-tenths levy for preliminary expenses.

<sup>27</sup>Cruickshank v. Bidwell, 176 U. S. 73, 80, 81, and cases cited.

<sup>28</sup>Tyler v. Judges, 179 U. S. 405; Cincinnati v. Dexter, 55 Ohio St. 93, 113; Goodrich v. Moore, 2 Minn. 61, 64; Adler v. Railway Co., 138 N. Y. 173, 180; Bigelow v. Bridge Co., 14 Conn. 565, 580.

<sup>29</sup>State, ex rel., Franklin County Conservancy District v. Valentine, 94 Ohio St. 440.

<sup>30</sup>Houck v. Little River District, 239 U. S. 244, 254, 264, 265.

<sup>31</sup>Miami County v. Dayton, 92 Ohio St. 215.

31        7. The objection to that part of section 47 which provides—

“A party who has not sought a remedy against any proceeding under this act until after bonds have been sold or the work constructed, cannot for any cause have an injunction against the collection of taxes or assessments for the payment of said bonds,”

is premature. The work has not been constructed, nor the bonds sold. When they are, any one who has not sought a remedy against any proceeding under the Act and deeming himself injured, may then seek an injunction. The court could then determine whether or not, under the case made, an injunction should issue.

We have considered also the other objections made by complainant to the validity of the Act, and are of opinion that they are without merit, and on the whole case we are satisfied that the interlocutory injunction sought by him should not be granted. It will, therefore, be denied at complainant's costs.

32        *Order Denying Application for Interlocutory Injunction.*

Entered August 9, 1917.

District Court of the United States, Southern District of Ohio, Western Division.

No. 134.

LOUIS H. ORR, Complainant,

vs.

HARRY M. ALLEN, EDWARD A. DEEDS, GORDON RENTSCHLER, and  
The Board of Directors of the Miami Conservancy District, Defendants.

This cause came on to be heard at this term before a court constituted under section 266 of the Judicial Code, on an application under its provisions by complainant for an interlocutory injunction, all proceedings being duly had in compliance with that enactment, and was argued by counsel. Thereupon, upon consideration thereof.

It was ordered, adjudged and decreed that the said application for said interlocutory injunction be, and the same is hereby, denied.

J. W. WARRINGTON.

A. M. J. COCHRAN.

H. C. HOLLISTER.

33 *Petition for Order Allowing Appeal from Order Denying Interlocutory Injunction.*

Filed August 24, 1917.

In the District Court of the United States.

No. 134.

LOUIS H. ORR, Plaintiff,

vs.

HENRY M. ALLEN et al., Defendants.

*Petition for Order Allowing Appeal from Order Denying Interlocutory Injunction.*

Comes now the above named complainant, Louis H. Orr, conceiving himself to be aggrieved by the order denying an interlocutory injunction, which order was made and entered in the above entitled cause, in the above entitled Court, on the Ninth day of August, 1917, wherein and whereby it was ordered and decreed that the complainant be denied an interlocutory injunction suspending or restraining the enforcement, operation or execution of a certain statute of the State of Ohio, which statute, known as House Bill No. 19, and being Section 6828 of the Ohio General Code, was passed by the Legislature of Ohio on the Fifth day of February, 1914, and approved by the Governor and filed in the office of the Secretary of State on the 17th day of February, 1914, sued upon in said cause and described in Complainant's Bill of Complaint, and upon which order complainant was denied an interlocutory injunction against the said respondents, hereby petitions said Court for an order allowing said complainant to prosecute an appeal from said order denying said interlocutory injunction, to the Honorable, the Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided, and also, that an order be made fixing the amount of security which the said complainant shall give and furnish upon such appeal, and your petitioner will ever pray.

GEO. S. LONG,

E. M. BELL, AND

ROBT. J. SMITH,

*Solicitors for Louis H. Orr.**Order.*

The foregoing petition on appeal is granted, and the claim of appeal therein made is allowed.

Done in vacation, this August 22nd, 1917.

J. W. WARRINGTON,

*United States Circuit Judge, 6th Circuit.*

J. E. SATER,

*U. S. Dist. Judge, Southern Dist. of Ohio.*

Respectfully submitted to the Honorable J. W. Warrington, United States Circuit Judge, Sixth Circuit, and to the Honorable J. E. Sater, United States District Judge, Southern District of Ohio, for the reason that the Honorable H. C. Hollister, United States District Judge for the Southern District of Ohio is absent from the State of Ohio, and for the reason that the Honorable J. W. Warrington was the presiding judge, signing the decree from which this order allowing appeal is sought.

LONG, BELL & SMITH,  
*Solicitors for Complainant.*

35

*Assignment of Errors.*

Filed August 24, 1917.

In the District Court of the United States.

No. 134.

LOUIS H. ORR, Plaintiff,

vs.

HENRY M. ALLEN et al., Defendants.

*Assignment of Errors.*

Now comes the above named appellant, Louis H. Orr, by George S. Long, E. M. Bell and Rob't J. Smith, his attorneys, and says that in the records and proceedings in the above named matter, there is manifest error in this, to-wit:

First.

That the United States Court, constituted under Section 266, of the Judicial Code of the United States, at Cincinnati, in the Southern District of Ohio, erred in holding and deciding that the interlocutory injunction prayed for should be denied, and in rendering its decree dismissing the bill.

Second.

The said Court erred in holding and deciding that Section 6828, of the Ohio General Code is not violative of and contrary to the constitution of the United States and the Constitution of Ohio.

Third.

The said Court erred in holding and deciding that paragraphs six and thirty-eight of Section 6828, of the Ohio General Code are not violative of the 14th Amendment to the Federal Constitution.

## Fourth.

36 The said Court erred in holding and deciding that said law complained of permits no lien against appellant's property, and permits no cloud upon his title until the conclusion of a hearing upon appeal provided for in paragraph thirty-four of said act.

## Fifth.

The said Court erred in holding, in spite of the fact that appellee and respondent plead that the *levee* of three-tenths of a mill provided for in paragraph forty-three of the Act, was never made or contemplated, that the District was not without funds to pay for property taken by condemnation.

## Sixth.

The said Court erred in denying the application of the said complainant and appellant for an interlocutory injunction on the ground that the said law was unconstitutional.

Wherefore, the said Louis H. Orr prays that the decree and order of the said District Court of the United States, Southern District of Ohio, appealed from herein, be reversed.

GEO. S. LONG,  
E. M. BELL,  
ROBT. J. SMITH,  
*Counsel for Appellant.*

37 *Order Allowing Appeal.*

Entered August 24, 1917.

In the District Court of the United States.

No. 134.

LOUIS H. ORR, Plaintiff,

vs.

HENRY M. ALLEN et al., Defendants.

*Order Allowing Appeal.*

ix  
ot  
Upon motion of Long, Bell & Smith, Counsel for complainant, and on filing petition of Louis H. Orr for order allowing appeal, together with an assignment of errors, it is ordered that an appeal be, and is hereby allowed to the Supreme Court of the United States from the order entered August 9th, 1917, denying an interlocutory

injunction against respondents herein; that the amount of bond upon said appeal be, and hereby is fixed at the sum of \$500.00, and that a certified transcript of the records and proceedings herein be forthwith transmitted to the Supreme Court of the United States.

August 22nd, 1917.

J. W. WARRINGTON,  
*United States Circuit Judge, 6th Circuit.*

J. E. SATER,  
*U. S. Dist. Judge, Southern Dist. Ohio.*

38      *Bond on Appeal from Order Denying Interlocutory Injunction.*

Filed August 24th, 1917.

In the District Court of the United States.

No. 134.

LOUIS H. ORR, Plaintiff,

vs.

HENRY M. ALLEN et al., Defendants.

Bond on Appeal from Order Denying Interlocutory Injunction.

Know all men by these presents, That we, Louis H. Orr, as principal, The United States Fidelity & Guaranty Company, as surety, are jointly and severally held and firmly bound unto the above named Henry M. Allen, et al., in the sum of Five Hundred Dollars, lawful money of the United States of America, to be paid to the said Henry M. Allen, et al., their executors, administrators or successors, for which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 22 day of August in the year of our Lord Nineteen Hundred and Seventeen.

The condition of the above obligation is such, that whereas said Louis H. Orr has taken an appeal to the Supreme Court of the United States, to reverse an order denying an interlocutory injunction, which order was rendered and entered by three judges, of whom one was a justice of the United States Circuit Court of Appeals, and the other two are District Judges in and for the Southern District of Ohio, which order was made and entered in the above entitled suit on the 9th day of August, 1917;

Now, therefore, the conditions of the above obligation is such that if the above named Louis H. Orr, complainant herein,  
39      shall prosecute said appeal to effect, and answer for all dam-



ages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

LOUIS H. ORR.

[SEAL.]

THE UNITED STATES FIDELITY &  
GUARANTY CO.,

By J. R. MILES, *Its Agent*.

By ROBT. J. SMITH, *Its Attorney*.

In presence of:

E. M. BELL.

JAMES SHOE.

The within bond is hereby approved, this 22nd day of August, 1917.

J. W. WARRINGTON,

*United States Circuit Judge, 6th Circuit.*

J. E. SATER,

*Dist. Judge, Southern District of Ohio.*

40

*Narrative Statement of Testimony.*

Filed September 25th, 1917.

*Narrative Statement of Testimony.*

A witness called on behalf of defense testifies as follows:

My name is Arthur C. Morgan; my occupation a civil engineer. I have been connected with the Conservancy project in Miami County since about May 5th, 1913; have been in charge of it ever since. The District lies along each side of the Miami River, and includes the land which was overflowed during the flood of 1913, and occasional narrow strips of land just outside of the over-flowed area that was affected by it, such as the islands that were surrounded, to which connections were cut off. We included also some lands which were not overflowed, but which were necessary to furnish sites for the work, such as lands on which we would build dams, land which was necessary to be taken to secure material for the building of dams, such as gravel pits, and lands that would be over-flowed in time of flood above the dams.

So all that land was not overflowed in 1913, but was necessary for the construction of the work.

The District is composed of lands that are to be benefited and lands that are to be taken for the purposes of this, and possibly some lands that will be benefited were not taken; that is perhaps a distinction that I should make. One of these dams is to be located above Piqua, where Mr. Louis H. Orr lives. That is, while I do not mean to testify that Mr. Louis H. Orr lives at Piqua, I think there is no misunderstanding as to this farm being located above Piqua, though I had no thought in mind either way.

41

I am familiar with the present condition of the Conservancy project and the progress of it.

In the ordinary course of events, without much interruption, if we do not have serious interruptions, we ought to be able to begin the preliminary work of constructing that dam at Piqua some time next spring, and possibly two years later we would reach the stage where we would perhaps close the dam.

Perhaps three years from now we would make a closure of that dam.

We have made, or have obtained, estimates on the cost of this project. The total appraisal or appraisement of benefits amounts to about, in round numbers, seventy-seven million dollars. From the estimates we have obtained from the prospective contractors, the proportions of that seventy-seven million dollars that will have to be assessed and collected to pay for the improvement, at the present price of labor and material, including the cost of such lands as it may become necessary to condemn for the improvement, or to take by purchase, would be approximately twenty-five per cent of that amount.

In Miami County in which Piqua is located, the number of tracts of land which were appraised for benefits, I would estimate at about three thousand; that is about three thousand separate tracts were appraised. I can not tell as to whether they were separately owned or not. I do not know how many exceptions were filed by property owners in the City of Piqua. I do not recall how many pieces of property were appraised in the City of Piqua; I do not recall the separate divisions. I do not recall that the number of properties appraised in Piqua was approximately twelve hundred tracts. The appraisers' work was not directly in my charge, and as I did not look up those figures, I do not recall and cannot tell; it is quite probable that is the correct number. I do not recall whether or

42 not seventy-five per cent of those twelve hundred properties were business places, or whether they have filed exceptions to the amounts of the appraisals. But if they have it will not materially alter our figures on the total amount; that is, if exceptions in the entire District were sustained to the extent of cutting out entirely all of the benefits appraised on all of those exceptions, it would reduce the total benefits about four per cent. But it would not reduce the total amount of the appraised benefits in the City of Piqua more than possibly about one-half; from one-third to one-half, I cannot definitely say; but taking the whole District, if all the exceptions were sustained, it would not reduce the seventy-seven millions more than about four per cent.

These three appraisers who did the work in the field had actually been at work from July, 1915, or two years.

They have had the assistance of myself and my force of about seventy engineers. They have also had the assistance of approximately one hundred real estate men who live in the various localities where they have worked.

E. M. KUNNS, called in behalf of defendant, testified as follows:

I am a member of the bar of Ohio, and at present I am Secretary of the Miami Conservancy District, having held that position for

two years, or since the District was organized. The District was organized June 28th, 1915, and the Board of Directors organized July 7th, 1915, at which time I was appointed secretary.

The appraisers were appointed August 4th, 1915. There have been fifty or more engineers in the field who have been assisting in the appraisal work. At one time, when the appraisers were getting data, there were as many as one hundred and fifty separate engineers throughout the District who were assisting them in that work. That number has varied from time to time. That possibly was the maximum number at one time.

The money that was paid these men was taken from the Flood Prevention Committee of Dayton. The citizens, or that committee, raised two million dollars for that purpose. There has never been any assessment for preliminary expenses of three-tenths of a mill; there has been no assessment of any kind whatever. The assessment roll is not yet made up.

The appraisal roll has been filed with the Clerk of the Conservancy Court, and copies have been filed with the clerks of the various counties; a copy filed with the clerk of each county. There are nine counties composing the Conservancy District. Those appraisals are being considered by the Conservancy Court in session at the present time. That Court has been in session since June 18th, 1917.

The two million dollars that was spoken of is not to be carried into the assessment; that two million dollars was raised by citizens; it has been raised for this enterprise. I am not in position to say whether any one will ever have to pay anything on that or not. I am familiar with the assessments of benefits appraised against the County of Miami, and think it is something like \$59,400.00, and I think that appraisement of benefits against the City of Piqua is \$324,500.00. I do not recall what the appraisement is against the complainant, Louis H. Orr.

There are nine judges sitting in the Conservancy Court, one from each County in the District: Hamilton, Butler, Preble, Montgomery, Miami, Shelby, Greene, Warren and Clark Counties. And this Court has heard the exceptions filed from Hamilton County, from Greene County and from Butler County. With the exception of a few that were left over from Greene County, and they have not yet sustained any exceptions, although I believe one is under advisement.

The undersigned, counsel for the parties in this case, agree that the above is the substance of the testimony offered on the hearing of the application for an injunction.

Sept. 4, 1917.

ROBT J. SMITH,

*For Complainant.*

J. A. McMAHON,

*For Deft.*

The above narrative statement of testimony is approved and ordered filed.

(Signed)

HOLLISTER,

*U. S. District Judge, S. D. O.*

45

*Præcipe for Record.*

Filed August 24th, 1917.

In the District Court of the United States for the Southern District  
of Ohio.

No. 134.

LOUIS H. ORR, Plaintiff,

vs.

HENRY M. ALLEN, Defendants.

*Præcipe for Record.*

To the Clerk :

Please prepare transcript for appealing to the Supreme Court of the United States, under Section 266, of the Judicial Code, from the order made in the above entitled cause August 9th, 1919, by Judges J. W. Warrington, A. M. J. Cochran and H. C. Hollister, denying an interlocutory injunction, including the following :

Copy of the following pleadings and documents :

- (a) Bill of Complaint.
- (b) Answer.
- (c) Reply.
- (d) Entry and Opinion of Court denying Interlocutory Injunction entered August 9th, 1917.
- (e) Petition for Appeal.
- (f) Assignment of Errors.
- (g) Order Allowing Appeal.
- (h) Appeal Bond.
- (i) Citation, with acknowledgment of service thereon.
- (j) Præcipe for Record.
- (k) Testimony of witnesses Morgan and Kuntz.

GEO. S. LONG,

E. M. BELL,

ROBT J. SMITH,

*Solicitors for Complainant.*

Notice of filing of this Præcipe acknowledged this 24 day of  
August, 1917.

J. A. McMAHON,

*Counsel for Defts.*

46     *Order Enlarging Time for Filing Record in Supreme Court of  
the United States.*

Filed September 8th, 1917.

In the District Court of the United States, Southern District of Ohio,  
Western Division.

In Equity.

No. 134.

LOUIS H. ORR

v.

HENRY M. ALLEN et al.

For good cause shown, the time is enlarged to the 20th day of  
October, 1917, for appellant to docket the above entitled and num-  
bered cause and file the record thereof with the Clerk of the Supreme  
Court of the United States.

47     United States District Court, Southern District of Ohio, West-  
ern Division.

In Equity.

No. 134.

LOUIS H. ORR, Plaintiff,

vs.

HENRY M. ALLEN et al., Defendants.

THE UNITED STATES OF AMERICA,  
*Southern District of Ohio,  
Western Division, ss:*

I, B. E. Dilley, Clerk of the District Court of the United States  
within and for the District and Division aforesaid, do hereby certify  
that the foregoing pages contain a true and correct copy of those por-  
tions of the record and proceedings in the above entitled cause indi-  
cated in the Praecipe filed herein on August 24th, 1917, as the same  
appear on file and of record in the office of the Clerk of said Court.

In witness whereof, I have hereunto subscribed my name and  
affixed the seal of said Court at the City of Cincinnati, Ohio, this  
26th day of September, A. D. 1917.

[Seal United States District Court, Southern Dis. of Ohio.]

B. E. DILLEY, *Clerk,*  
By HARRY F. RABE, *Deputy.*

*Citation and Return.*

UNITED STATES OF AMERICA, ss:

The President of the United States to Henry M. Allen, Edward A. Deeds, Gordon Rentschler, and The Board of Directors of the Miami Conservancy District, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, in the District of Columbia, on the 21st day of September next, pursuant to an order allowing an appeal to be entered in the Clerk's office of the District Court of the United States, for the Southern District of Ohio, in that certain action numbered 134, in which Louis H. Orr is complainant and appellant, and you are respondents and appellees, to show cause, if any there be, why the decree rendered against the said claimant and appellant, as in the said order allowing an appeal mentioned, should not be granted, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. W. Warrington, United States Circuit Judge for the Sixth Circuit, this 22nd day of August, A. D. 1917.

J. W. WARRINGTON,  
J. E. SATER,

*Dist. Judge, Southern Dist. of Ohio.*

Service of the within citation, and receipt of a copy thereof admitted this 23 day of August, A. D. 1917.

O. B. BROWN &  
J. A. McMAHON,  
*Solicitors for Henry M. Allen et al.,  
Appellee- and Respondent- in Lower Court.*

STATE OF OHIO,  
*County of Miami, ss:*

On this 23d day of August, A. D. 1917, personally appeared before me, a Notary Public in and for said County, Robert J. Smith, and made oath that he delivered a copy of the within Citation to

ROBERT J. SMITH,  
*Solicitor for Appellee.*

Sworn to and subscribed before me, this 23d day of August, 1917.

[Notarial Seal, Miami County, Ohio.]

J. C. F——, JR.,

*Notary Public, Miami County, Ohio.*

Defendants. Citation and Return. Long, Bell & Smith, Lawyers,  
423-424 Orr-Flesh Building, Piqua, Ohio. Filed Aug. 24, 1917.  
B. E. Dilley, Clerk.

50 In the District Court of the United States, Southern District  
of Ohio, Western Division.

In Equity.

No. 134.

LOUIS H. ORR

v.

HENRY M. ALLEN et al.

For good cause shown, the time is enlarged to the 20th day of  
October, 1917, for appellant to docket the above entitled and num-  
bered cause and file the record thereof with the Clerk of the Supreme  
Court of the United States.

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51 [Endorsed:] In Equity No. 134. United States District  
Court, Southern District of Ohio, Western Division. Louis  
H. Orr vs. Henry M. Allen et al. Order enlarging time for filing  
record in Supreme Court of the United States. Enter, J. E. Sater, J.  
Eq. 2-168. Filed Sep. 8, 1917. B. E. Dilley, Clerk.

Endorsed on cover: File No. 26,189. S. Ohio D. C. U. S. Term  
No. 722. Louis H. Orr, appellant, vs. Henry M. Allen, Edward A.  
Deeds, Gordon Rentschler, and The Board of Directors of the Miami  
Conservancy District. Filed October 2d, 1917. File No. 26,189.



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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1917.

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No. 722.

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LOUIS H. ORR, *Appellant*,  
v.s.

HENRY M. ALLEN, EDWARD A. DEEDS, GORDON RENTSCH-  
LER, AND THE BOARD OF DIRECTORS OF THE MIAMI  
CONSERVANCY DISTRICT.

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF OHIO.

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**MOTION TO ADVANCE.**

Come now the appellees in the above entitled cause by  
their solicitors, and, for the reasons hereinafter appearing,  
move the Court to advance the said cause for hearing upon  
such day as to the Court may seem proper and convenient:

(1) The said cause was instituted in the District Court of the United States for the Southern District of Ohio, by the appellant, a citizen of the State of California, as complainant, against the appellees, citizens of the State of Ohio, individually, and as the Board of Directors of the Miami Conservancy District, a body corporate for public purposes and a political subdivision of the State of Ohio, created and constituted by and under the act of the General Assembly of the said State of Ohio, of date February 5, 1914, known as the "Conservancy Act of Ohio," and entitled "To prevent floods, to protect cities, villages, farms and highways from inundation, and to authorize the organization of drainage and conservation districts," and the bill of complaint therein challenges the said act as, among other things, in contravention and violation of Section 1 of Article 14 of the Constitution of the United States, and prays interlocutory injunction against the enforcement of the said act, accordingly.

(2) The said cause was instituted under the provisions of Section 266 of the Judicial Code of the United States, which said section provides, among other things, that the hearing upon every such application for interlocutory injunction shall be given precedence, and shall be in every way expedited and assigned for hearing at the earliest practicable day, and that an appeal may be taken direct to this Court from an order granting or denying such interlocutory injunction.

(3) The cause involves the legality of numerous other conservancy districts of the said State of Ohio, created and constituted by and under the act of the General Assembly thereof aforesaid, and as respects the said Miami Conservancy District the legality of the expenditure therein alone of the sum of to-wit, Twenty-Five Million Dollars (\$25,-

000,000.00), to carry out and accomplish the objects of the said act, as aforesaid.

Respectfully submitted,

HENRY E. DAVIS,  
*Solicitor for Appellees.*

OREN BRITT BROWN,  
JOHN A. McMAHON,  
*Of Counsel for Appellees.*

To Robert J. Smith, Esq.,  
Solicitor for Appellant.

Sir:—

Please take notice that the foregoing motion will be submitted to the Supreme Court of the United States, on Monday, March 4, 1918, at the opening of the Court, or as soon thereafter as counsel can be heard.

HENRY E. DAVIS,  
*Solicitor for Appellees.*

OREN BRITT BROWN,  
JOHN A. McMAHON,  
*Of Counsel for Appellees.*

I, the undersigned solicitor for the appellant, Louis H. Orr, acknowledge receipt of the foregoing motion, and hereby waive any right to be heard upon said motion.

ROBERT J. SMITH.  
*Solicitor for Appellant.*

Piqua, Ohio, February 18, 1918.

Office Supreme Court, U. S.  
FILED

AUG 1 1918

JAMES O. WAHER,

CLERK.

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1918.

No. 238.

LOUIS H. ORR

vs.

HENRY M. ALLEN ET AL

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF OHIO.

BRIEF OF APPELLANT.

ROBT J. SMITH

*Solicitor for Appellant.*



# THE CONSERVANCY ACT OF OHIO.

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## IN TRANSCRIPT OF RECORD.

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Section 6828, Ohio General Code.

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#### Cases relied upon by Appellant :

City of Dayton *vs.* Bauman, 66 O. S. Rep.,  
379, 389, 391 and 392.

Norwood *vs.* Baker, 172 U. S. Rep., 269.

IN THE  
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

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**No. 288.**

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LOUIS H. ORR

VS.

HENRY M. ALLEN ET AL.

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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**BRIEF OF APPELLANT.**

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**Statement of the Case.**

This proceeding was instituted in the District Court and submitted under the provisions of Section 266 of the Judicial Code, to test the constitutionality of the so-called "Conservancy Act of Ohio," Section 6828, Ohio General Code.



A striking characterization of the act fell from the lips of eminent counsel seeking to uphold its constitutionality, in the words:

"This case before your honors is an anomalous assessment case, and there probably was never another like it anywhere in the world."

#### History.

In the year 1913 an unprecedented flood visited the Miami River Valley in Ohio, resulting in the wildest terror and the resort to martial law in the city of Dayton and possibly at other points, and its citizens, naturally panic-stricken, impressed their frantic fears upon a legislature which convened shortly after, and under the excitement of the hour passed what is denominated "An Emergency Act," but which never received an emergency enactment. More than four years have elapsed and the fears and excitement soon disappeared.

This act, however, if upheld, would tax appellant, a citizen of California, to provide, not drainage, but an artificial *interference with* drainage by storage reservoirs in Miami County, where his property is located, to pile up prospective flood waters above one body of citizens to prevent it from flowing through its natural channels down past another body of citizens.

### First Proposition.

APPELLANT WOULD BE DEPRIVED OF PROPERTY (THROUGH TAXATION) WITHOUT DUE PROCESS OF LAW, AND IS DENIED THE EQUAL PROTECTION OF THE LAW.

Section 6828-6 is violative of the Fourteenth Amendment, because, since the right of appeal exists only by virtue of statute, and this section of statute by the last clause of the fourth paragraph of subsection 6 confers the right of appeal upon one disappointed class of litigants only, and this is an objection which has not been adjudicated by the Supreme Court of Ohio, although appellee will contend that it has been in the case of *Snyder et al. vs. Deeds et al.*, reported in the 91 O. S. Reports, at page 407.

But in that case, decided without opinion, the Supreme Court did hold that this subsection 6, in making any allowance of an appeal, is void, because repugnant to the provision of the State Constitution, which confers appellate jurisdiction upon the State Courts of Appeal, in *chancery cases only*; and holding that the case before it was not a chancery case, thus leaving entirely undecided the question here raised under the Federal Constitution.

If it be contended by appellees that subsection 34 does not violate the Fourteenth Amendment, because it provides for appeal by complainant from

the order confirming the report of the appraisers, we suggest that the second paragraph of such subsection 34 provides that such appeal "shall be from the *award*, but from *no other part of the decree*"—that is, prohibits an attack by appeal upon the validity of the *entire* proceeding, or even upon the *method* of appraisement.

And the attention of the court is directed to the conflict between this subsection 34 and the preceding section 33, which provides that an approval and confirmation of the appraisers' report shall be final and *incontestible*, while section 34 provides for an appeal under certain restrictions from such finding.

#### **Second Proposition.**

Subsections 17 and 18, conferring not only the ordinary right of eminent domain, but the dominant right of eminent domain, are confiscatory of appellant's property and his vested rights to water supply and drainage in the river, and these sections, together with subsection 53, authorize the impairment of existing contracts.

#### **Third Proposition.**

The legislature has no power to confer non-judicial powers upon courts.

#### **Fourth Proposition.**

"If it be true that the lands taken (under subsections 27 and 28, and under the various sections

of this act) is taken for public use, then such lands must be paid for out of general revenue; and general revenue, under article 12 A, section 2 of the Ohio Constitution, can only be raised by taxation; that is, by a tax levied by a uniform rule."

Authority: *City of Dayton vs. Bauman*, 66 Ohio State Reports, 379 (at page 389).

However, this act provides for paying for these lands taken, by assessments against the properties of appellant and others; also providing for assessments (that is, necessarily assessments upon both realty and personalty) against the City of Piqua and the County of Miami, in both of which political subdivisions, as is established by the record, the appellant owns property. And yet the Supreme Court of Ohio has expressly said, in discussing this act, in an opinion rendered in the case of *The County of Miami et al. vs. The City of Dayton et al.*, reported in the 92 Ohio State Reports, 213, at page 229 of that opinion: "The very fact that personal property is excluded from bearing the cost of the improvement and that the word property is held to mean by the terms of the act real property, forces us to the conclusion that it was the intention of the legislature to provide for the cost of the improvement by way of assessment, as in other drainage cases." But we cannot be forced to such a conclusion in the light of the record, which shows assessments against both the City of Piqua and the

County of Miami, in which subdivision appellant is shown to be a taxpayer.

"Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of assessment upon the taxable valuation."

Authority: *Cummings vs. Bank*, 101 U. S., 153 (at page 158); *Western Union vs. Poe*, 61 Federal, 449 (at page 458); *Bank vs. Hines*, 3 Ohio State Reports, 15.

In appellee's testimony, page — of the record, it is shown that the levy of three-tenths of a mill, authorized by section 6828-43, has never been made and that all expenses to date have been paid out of the fund borrowed through voluntary subscription, but while they show that such levy was never made or contemplated, subsection 43 of the act expressly gives permission to levy it, and the Supreme Court of Ohio has spoken in the case of the State *ex rel. Franklin County Conservancy District et al.* (District never organized) *vs. Valentine*, reported in 94 Ohio State Reports, 440, saying that "The levy authorized by section 6828-43 of three-tenths of one mill on the assessed valuation of property constitutes the final and sole source of preliminary fund defined in section 42 of the Conservancy Act."

Section 42 expressly defines each separate fund recognized by the act. It is manifest that lands condemned and purchased for use of dams and

reservoirs cannot be purchased from the preliminary fund of the district, because the record shows that it has no preliminary fund; such lands cannot be purchased from the bond fund, because that has been expressly prohibited by the ruling of the Supreme Court of the United States in the case of *Norwood vs. Baker*, recorded in 172 United States Reports, 269, and it is equally clear that such lands could not be paid for out of the only remaining fund of the district designated maintenance fund.

Argument: The contention, therefore, seems to us clearly established that until the district deprives appellant of his property without due process of law, that it is without funds with which to pay for lands condemned for its use (for the only funds claimed as the property of the district constitute its *liabilities* and not its *assets*, and the district is clearly without legal power to use its liabilities for the purchase of lands condemned or the payment of damages awarded by its appraisers), before taking the property needed, and therefore *threatens* to assess complainant's property for alleged benefits, in order to obtain the funds with which to pay for lands so to be taken, all in contravention of the law as announced in the case of *Norwood vs. Baker*, 172 United States, 269.

We respectfully submit the claim that he is clearly entitled to a writ of injunction restraining the officers of the district from issuing the vouchers and bonds provided for in sections 42, 43, 44, 45, and 47 of the act.

### Summary.

Confronted with the rule that the national courts endeavor to, and generally do, follow the construction of the constitution and statutes of a State adopted in "well-considered opinions of its highest judicial tribunal, in cases that involve no question of general or commercial law, and no questions of right under the constitution and laws of the nation," we have sought to strictly confine ourselves to a brief presentation of those points only which, though heretofore raised, have not yet been directly passed upon by the local State court or the lower national court.

That the refusal of the lower court to allow the injunction, the refusal being largely predicated throughout upon the case of *O'Neill vs. Leamer*, 93 Nebraska, 786, affirmed by this court in 239 U. S., 244, should be considered in the light of the essential differences between the Nebraska statute there construed and this Ohio statute.

It will be easily noted that methods of selecting appraisal officers, valuing and otherwise proceeding, are vitally different (Subsection 26, *et seq.*).

The alleged purpose of the Ohio act appears to have had possibly undue weight with the lower court, as clearly evidenced by the extensive preamble to the opinion of that court, whereas, appellant contends that however much the courts may desire to carry out what they may rightly or wrongly conceive to be the popular will, that nevertheless it is

not the high-sounding title and noble purposes recited in the act, but the methods authorized therein, permitting confiscation of appellant's property without due process of law, that he respectfully urges upon the attention of this honorable court, believing that no allegations of motives of public policy will deprive a litigant of his constitutional rights.

Respectfully submitted,

ROBT J. SMITH,

*Solicitor for Appellant.*



# AN ACT

To prevent floods, to protect cities, villages, farms and highways from inundation, and to authorize the organization of drainage and conservation districts.

*Be it Enacted by the General Assembly of the State of Ohio:*

## I. SHORT TITLE AND INTERPRETATION.

SECTION 1. TERMS DEFINED. This act may be known and cited as the "Conservancy Act of Ohio"; the bonds which may be issued hereunder may be briefly called "Conservancy Bonds," and shall be so engraved or printed on their face; the districts created hereunder shall be briefly termed "Conservancy Districts"; the tax books and records provided for hereunder shall be termed "Conservancy Books" or "Conservancy Records," and such titles shall be printed, stamped or written thereon.

Wherever the term "publication" is used in this act and no manner specified therefor, it shall be taken to mean once a week for three consecutive weeks in each of two newspapers of different political affiliations (if such newspapers there be) and of general circulation in the county or counties wherein such publication is to be made. It shall not be necessary that publication shall be made on the same day of the week in each of the three weeks; but not less than fourteen days (excluding the day of the first publication), shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

Wherever the term "person" is used in this act, and not otherwise specified, it shall be taken to mean person, firm, co-partnership, association or corporation, other than county, township, city, village or other political subdivision. Similarly, the words "public corporation" shall be taken to mean counties, townships, cities, villages, school districts, road districts, ditch dis-

tricts, park districts, levee districts, and all other governmental agencies clothed with the power of levying general or special taxes.

Wherever the term "court" is used, and not otherwise specified, it shall be taken to mean the court of common pleas wherein the petition for the organization of the district was filed and granted.

Wherever the terms "land" or "property" are used in this act they shall, unless otherwise specified, be held to mean real property, as the words "real property" are used in and defined by the laws of the State of Ohio, and shall embrace all railroads, tramroads, roads, electric railroads, street and interurban railroads, streets and street improvements, telephone, telegraph, and transmission lines, gas, sewerage and water systems, pipe lines and rights of way of public service corporations, and all other real property whether public or private.

## II. ORGANIZATION OF DISTRICT.

**SECTION 2. COURT OF COMMON PLEAS TO ORGANIZE DISTRICTS.** The court of common pleas of any county in this state, or any judge thereof in vacation, is hereby vested with jurisdiction, power and authority, when the conditions stated in the third section of this act are found to exist, to establish conservancy districts, which may be entirely within, or partly within and partly without, the county in which said court is located, for all or any of these purposes:

- (a) of preventing floods;
- (b) of regulating stream channels by changing, widening and deepening the same;
- (c) of reclaiming or of filling wet and overflowed lands;
- (d) of providing for irrigation where it may be needed;
- (e) of regulating the flow of streams;
- (f) of diverting, or in whole or in part eliminating water courses;

and incident to such purposes and to enable their accomplishment, to straighten, widen, deepen, change, divert, or change the course or terminus of, any natural or artificial water course; to build reservoirs, canals, levees, walls, embankments, bridges or dams; to maintain, operate and repair any of the construction herein named; and to do all other things necessary for the fulfillment of the purposes of this act.

**SECTION 3. PETITION.** Before any court shall establish a district as outlined in section 2, a petition shall be filed in the office of the clerk of said court, signed either by five hundred freeholders, or by a majority of the freeholders, or by the owners of more than half of the property, in either acreage or value, within the limits of the territory proposed to be organized into a district. Such a petition may be signed by the governing body of any public corporation lying wholly or partly within the proposed district, in such manner as it may prescribe, and when so signed by such governing body such a petition on the part of the said governing body shall fill all the requirements of representation upon such petition of the freeholders of such public corporation, as they appear upon the tax duplicate; and thereafter it shall not be necessary for individuals within said public corporation to sign such a petition. Such a petition may also be signed by railroads and other corporations owning lands.

And such petition may also be filed by any city or cities interested in some degree in the improvement, upon proper action by their governing bodies.

The petition shall set forth:

First: The proposed name of said district.

Second: The necessity for the proposed work and that it will be conducive to the public health, safety, convenience or welfare.

Third: A general description of the purpose of the contemplated improvement, and of the territory to be included in the proposed district. Said description need not be given by metes and bounds or by legal subdivisions, but it shall be sufficient if a generally accurate description is given of the territory to be organized as a district. Said territory need not be contiguous, pro-

vided it be so situated that the public health, safety, convenience or welfare will be promoted by the organization as a single district of the territory described.

Fourth: Said petition shall pray for the organization of the district by the name proposed.

No petition with the requisite signature shall be declared null and void on account of alleged defects, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, by correcting any errors in the description of the territory, or in any other particular. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on said petition shall be considered by the court the same as though filed with the first petition placed on file.

In determining when a majority of land owners have signed the petition the court shall be governed by the names as they appear upon the tax duplicate, which shall be prima facie evidence of such ownership.

**SECTION 4. BOND OF PETITIONERS.** At the time of filing the petition, or at any time subsequent thereto and prior to the time of the hearing on said petition, a bond shall be filed, with security approved by the court, sufficient to pay all the expenses connected with the proceeding in case the court refuses to organize the district. If at any time during the proceeding the court shall be satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed to be not less than ten days distant, and upon failure of the petitioners to execute the same the petition shall be dismissed.

**SECTION 5. NOTICE OF HEARING ON PETITION.** Immediately after the filing of such petition, the clerk of the court with whom such petition is filed shall cause notice by publication, (form 1, schedule), to be made of the pendency of the petition and of the time and place of the hearing thereon.

The court of common pleas of the county in which the petition was filed shall thereafter, for all purposes of this act, except as hereinafter otherwise provided, maintain and have original and exclusive jurisdiction co-extensive with the boundaries and limits of said district and of lands and other property proposed to be included in said district or affected by said district, without regard to the usual limits of its jurisdiction.

SECTION 6. HEARING ON PETITION. — ORGANIZATION OF DISTRICT. Any owner of real property in said proposed district who individually may not have signed such a petition and who wishes to object to the organization and incorporation of said district shall, on or before the date set for the cause to be heard, file his objections why such district should not be organized and incorporated. Such objections shall be limited to a denial of the statements in the petition, and shall be heard by the court as an advanced case without unnecessary delay.

Upon the said hearing, if it shall appear that the purposes of this act would be subserved by the creation of a conservancy district, the court shall, after disposing of all objections as justice and equity require, by its findings, duly entered of record, adjudicate all questions of jurisdiction, declare the district organized and give it a corporate name, by which in all proceedings it shall thereafter be known, and thereupon the district shall be a political subdivision of the State of Ohio, a body corporate with all the powers of a corporation, shall have perpetual existence, with power to sue and be sued, to incur debts, liabilities and obligations; to exercise the right of eminent domain and of taxation and assessment as herein provided; to issue bonds and to do and perform all acts herein expressly authorized and all acts necessary and proper for the carrying out of the purposes for which the district was created, and for executing the powers with which it is invested.

In such decree the court shall designate the place where the office or principal place of business of the district shall be located, which shall be within the corporate limits of the district if practicable, and which may be changed by order of court from time

to time. The regular meetings of the board of directors shall be held at such office or place of business, but for cause may be adjourned to any other convenient place. The official records and files of the district shall be kept at the office so established.

If the court finds that the property set out in said petition should not be incorporated into a district, it shall dismiss said proceeding and adjudge the costs against the signers of the petition, in the proportion of the interest represented by them. Any petitioner may, within twenty days after the refusal, appeal from an order refusing to establish such district, to the court of appeals of said county, upon giving bond in a sum to be fixed by the court.

After an order is entered establishing the district, such order shall be deemed final and binding upon the real property within the district and shall finally and conclusively establish the regular organization of the said district against all persons except the State of Ohio upon suit commenced by the attorney general. Any such suit must be commenced within three months after said decree declaring such district organized as herein provided, and not otherwise. The organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly authorized.

In case of a district lying in more than one county, one common pleas judge of each of the counties having land in the district shall sit as a court in the court house where the original petition was filed, to make the findings required by this section and by section 12 herein. A majority of said judges shall be necessary to render a decision. In case of a tie, said matter shall be forthwith certified to the court of appeals of said county, and said court shall hear and determine said matter as an advanced case in preference to all other business.

**SECTION 7. DECREE OF INCORPORATION FILED.** Within thirty days after the said district has been declared a corporation by the court, the clerk of the court shall transmit to the secretary of state, and to the county recorder in each of the counties having lands in said district, copies of the findings and the decree of the

court incorporating said district. The same shall be filed and recorded in the office of the secretary of state in the same manner as articles of incorporation are now required to be filed and recorded under the general law concerning corporations, and copies shall also be filed in the office of the county recorder of each county in which a part of the district may be, where they shall become permanent records; and the recorder in each county shall receive a fee of one dollar for filing and preserving the same, and the secretary of state shall receive for filing and for recording said copies such fees as now are or hereafter may be provided by law for like services in similar cases.

### III. ORGANIZATION OF BOARD. — ITS POWERS AND DUTIES.

SECTION 8. APPOINTMENT OF DIRECTORS. Within thirty days after entering the decree incorporating said district, the court shall appoint three persons, at least two of whom shall be resident freeholders within the district, as a board of directors of the district — one for a term of three years, one for a term of five years and one for a term of seven years. At the expiration of their terms of office appointments shall be made for terms of five years. The court shall fill all vacancies which may occur on the said board.

In case of a district lying in more than one county, appointments of directors under this section, and of appraisers under section 26 of this act shall not be effective until approved by a majority of the judges constituting the court provided for in section 6 of this act.

SECTION 9. BOARD OF DIRECTORS TO ORGANIZE. Each director before entering upon his official duties shall take and subscribe to an oath before a suitable officer that he will honestly, faithfully and impartially perform the duties of his office, and that he will not be interested directly or indirectly in any contract let by said district, which said oath shall be filed in the office of the clerk of said court in the original case. Upon taking the oath, the board of directors shall choose one of their number president of the



board, and shall elect some suitable person secretary, who may or may not be a member of the board. Such board shall adopt a seal, and shall keep in a well-bound book a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts, which shall be open to the inspection of all owners of property in the district, as well as to all other interested parties.

**SECTION 10. QUORUM.** A majority of the directors shall constitute a quorum, and a concurrence of the majority in any matter within their duties shall be sufficient for its determination.

**SECTION 11. MAY EMPLOY AGENTS.** The secretary shall be the custodian of the records of the district and of its corporate seal and shall assist the board in such particulars as it may direct in the performance of its duties. It shall be the duty of the secretary to attest, under the corporate seal of the district, all certified copies of the official records and files of the district that may be required of him by the provisions of this act, or by any person ordering the same and paying the reasonable cost of transcription. And any portion of the record so certified and attested shall *prima facie* import verity. The secretary shall serve also as treasurer of the district, unless a treasurer is otherwise provided for by the board. The board may also employ a chief engineer who may be an individual, copartnership or corporation; an attorney; and such other engineers, attorneys and other agents and assistants as may be needful; and may provide for their compensation, which, with all other necessary expenditures, shall be taken as a part of the cost of the improvement. The employment of the secretary, treasurer, chief engineer and attorney for the district shall be evidenced by agreements in writing, which, so far as possible, shall specify the amounts to be paid for their services. The chief engineer shall be superintendent of all the works and improvements, and shall make a full report to the board each year, or oftener if required, and may make such suggestions and recommendations to the board as he may deem proper.



SECTION 12. TO PREPARE PLANS. Upon their qualification, the board shall prepare or cause to be prepared a plan for the improvements for which the district was created. Such plan shall include such maps, profiles, plans and other data and descriptions as may be necessary to set forth properly the location and character of the work, and of the property benefited or taken or damaged, with estimates of cost and specifications for doing the work.

In case the board of directors finds that any former survey made by any other district or in any other manner is useful for the purposes of the district, the board of directors may take over the data secured by such survey, or such other proceedings as may be useful to it, and may pay therefor an amount equal to the value of such data to said district. No construction shall be made under the authority of this act which will cause the flooding of any village or city or which will cause the water to back up into any village or city, unless the board of directors shall have acquired and paid for the right to use the land affected for such purpose, and shall have paid all damages incident thereto. No railroad shall be required to be constructed with a grade in excess of the maximum ruling grade then existing upon that division of said railroad whereon said change is required.

Upon the completion of such plan, the board shall cause notice by publication to be given as provided in section 1 herein in each county of said district, of such completion of said plan, and shall permit the inspection thereof at their office by all persons interested. Said notice shall fix the time and place for the hearing of all objections to said plan not less than twenty days nor more than thirty days after the last publication of said notice. All objections to said plan shall be in writing and filed with the secretary of said board at his office not more than ten days after the last publication of said notice. After said hearing before the board of directors, the said board shall adopt a plan as the official plan of the said district. If, however, any person or persons object to said official plan, so adopted, then such person or persons may, within ten days, from the adoption of said official plan, file their objections in writing, specifying the features of the plan to which

they object, in the original case establishing the district in the office of the clerk of said court, and he shall fix a day for the hearing thereof before the court, not less than twenty days nor more than thirty days after the time fixed for filing objections, at which time the judges, sitting as a court as provided for in section 6 herein, for the organization of the district, shall meet at the court house of the county where said original case is pending and hear said objections and adopt, reject or refer back said plan to said board of directors. A majority of the judges shall control and in case of a tie, shall proceed as provided in section 6 herein. If said court should reject said plan, then said board shall proceed as in the first instance under this section to prepare another plan. If the court should refer back said plan to said board for amendment, then the court shall continue the hearing to a day certain without publication of notice. If the said court should approve said plan as the official plan of said district, then a certified copy of said journal of said court shall be filed with the secretary of the board of directors, and by him incorporated into the records of the district. The official plan may be altered in detail from time to time until the assessment roll is filed, and of all such alterations the appraisers shall take notice. But after the assessment roll has been filed in court no alterations of the official plan shall be made except as in section 37 hereof provided.

**SECTION 13. TO EXECUTE WORKS.** The board of directors shall have full power and authority to devise, prepare for, execute, maintain and operate any or all works or improvements necessary or desirable to complete, maintain, operate and protect the official plan. They may secure and use men and equipment under the supervision of the chief engineer or other agents, or they may in their discretion let contracts for such works, either as a whole or in parts.

**SECTION 14. MAY ENTER UPON LANDS.** The board of directors of any district organized under this act, or their employees or agents, including contractors and their employees, and the members of the board of appraisers and their assistants, may enter upon lands within or without the district in order to make surveys

and examinations to accomplish the necessary preliminary purposes of the district, or to have access to the work, being liable, however, for actual damage done, but no unnecessary damage shall be done. Any person or corporation preventing such entrance shall be guilty of misdemeanor, punishable by fine not exceeding fifty dollars.

**SECTION 15. GENERAL POWERS.** In order to effect the protection, reclamation or irrigation of the land and other property in the district, and to accomplish all other purposes of the district, the board of directors is authorized and empowered to clean out, straighten, widen, alter, deepen or change the course or terminus of any ditch, drain, sewer, river, water course, pond, lake, creek or natural stream in or out of said district; to fill up any abandoned or altered ditch, drain, sewer, river, water course, pond, lake, creek or natural stream, and to concentrate, divert or divide the flow of water in or out of said district; to construct and maintain main and lateral ditches, sewers, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations and siphons, and any other works and improvements deemed necessary to construct, preserve, operate or maintain the works in or out of said district; to construct or enlarge or cause to be constructed or enlarged any and all bridges that may be needed in or out of said district; to construct or elevate roadways and streets; to construct any and all of said works and improvements across, through or over any public highway, canal, railroad right of way, track, grade, fill or cut, in or out of said district; to remove or change the location of any fence, building, railroad, canal, or other improvements in or out of said district; and shall have the right to hold, encumber, control, to acquire by donation, purchase or condemnation, to construct, own, lease, use and sell real and personal property, and any easement, riparian right, railroad right of way, canal, cemetery, sluice, reservoir, holding basin, mill dam, water power, wharf, or franchise in or out of said district for right of way, holding basin or for any necessary purpose, or for material to be used in constructing and maintaining said works and im-

provements, to replat or subdivide land, open new roads, streets and alleys, or change the course of an existing one.

SECTION 16. TO ADVERTISE AND LET CONTRACTS. When it is determined to let the work by contract, contracts in amounts to exceed one thousand dollars shall be advertised after notice calling for bids shall have been published, once a week for five consecutive weeks completed on date of last publication, in at least one newspaper of general circulation within said district, where the work is to be done, and the board may let said contract to the lowest or best bidder who shall give a good and approved bond, with ample security, conditioned on the carrying out of the contract. But said contract shall not be let to another than the lowest bidder unless upon a hearing before the court and upon notice to all parties interested, an order be obtained therefor. Such contract shall be in writing, and shall be accompanied by or shall refer to plans and specifications for the work to be done, prepared by the chief engineer. Said contract shall be approved by the board of directors and signed by the president of the board and by the contractor, and shall be executed in duplicate. Provided, that in case of sudden emergency when it is necessary in order to protect the district, the advertising of contracts may be waived upon the unanimous consent of the board of directors, with the approval of the court or judge in vacation.

SECTION 17. DOMINANT RIGHT OF EMINENT DOMAIN. Said board, where necessary for the purposes of this act, shall have a dominant right of eminent domain over the right of eminent domain of railroad, telegraph, telephone, gas, water power and other companies and corporations, and over townships, villages, counties and cities.

In the exercise of this right due care shall be taken to do no unnecessary damage to other public utilities, and, in case of failure to agree upon the mode and terms of interference, not to interfere with their operation or usefulness beyond the actual necessities of the case, due regard being paid to the other public interests involved.

SECTION 18. MAY CONDEMN UNDER GENERAL LAW. Said board shall also have the right to condemn for the use of the district, any land or property within or without said district not acquired or condemned by the court on the report of the appraisers, according to the procedure provided by law for the appropriation of land or other property taken for telegraph, telephone and railroad rights of way, instead of having appraisals and assessments made by the board of appraisers.

SECTION 19. MAY MAKE REGULATIONS TO PROTECT WORKS. Where necessary in order to secure the best results from the execution and operation of the plans of the district, or to prevent damage to the district by the deterioration or misuse, or by the pollution of the waters, of any water course therein, the board of directors may make regulations for and may prescribe the manner of building bridges, roads or fences or other works in, into, along or across any channel, reservoir or other construction; and may prescribe the manner in which ditches or other works shall be adjusted to or connected with the works of the district or any water course therein; and, when not in conflict with the regulations of the state board of health, may prescribe the manner in which the water courses of the district may be used for sewer outlets or for disposal of waste.

The construction of any works in a manner harmful to the district or to any water course therein, and in a manner contrary to that specified by the directors, shall be a misdemeanor, punishable by a fine of not more than one thousand dollars. The directors shall have authority to enforce by mandamus or otherwise all necessary regulations made by them and authorized by this act, and may remove any harmful construction or may close any opening improperly made, and they are authorized to bring such suits in mandamus in the court of appeals in the first instance, if deemed advisable by them. Any person, corporation or municipality wilfully failing to comply with such regulations shall be liable for damage caused by such failure, and for the cost of renewing any construction damaged or destroyed.

**SECTION 20. MAY REMOVE BRIDGES.** Wherever the official plan requires the building, modification, removal or rebuilding of any bridge, grade, aqueduct or other construction, and a hearing upon the report of the appraisers has been had and a final order issued by the court for appraisals and assessments affecting such constructions, the owner of said bridge, grade, aqueduct or other structure shall be bound to make such changes or adjustments within the time specified in the official plan, or within the time directed by the court, which time shall be a reasonable one under all the circumstances. In case such changes or adjustments are not made, the board of directors may make such adjustments or removals. If the change or improvement of a natural water course is made necessary by the insufficiency of the bridge or other structure to permit the water of the stream to pass through it in times of high water, the work of altering or removing said bridge or other structure shall be at the expense of the owner. Before the removal or modification of any works outlined in this section, the board of directors shall give thirty days' notice to the owner of such bridge or such construction that the same be adapted to the plans. In case the owner of any bridge or other structure shall object to the modification or removal of such bridge or other structure on the ground that the cost of the modification or removal will be greater than the benefits resulting from such removal, a hearing shall be had before the court of common pleas having the original case, and if such contention is sustained, such modification or removal shall not be required.

The board of directors of any district organized under this law shall have full power and authority to improve in alignment, section, grade or in any other manner any water course, and they may require the removal, widening, lengthening, deepening, raising or other change of any public or private road bridge or railroad bridge or any aqueduct or telephone, telegraph, gas, oil, sewer, water or other pipe lines or any other construction over, along, across, under or through such water course. In case such change is made necessary in any such structure by the failure of such bridge or other structure to permit the free flow of the water

in such stream in time of flood, then the owner of any such construction shall make such change without cost to the district, or without any claim for damages against the district, except that the district shall pay the cost of excavating the earth for the enlargement of any channel or for placing earth for the filling of any channel where such excavation or filling is required as a part of plans of the district in making the changes outlined in this section, but the district shall not be required to make such fill or excavation unless it would be necessary to the plans of the district if the bridge or other construction did not exist.

#### SECTION 21. PASSING EQUIPMENT THROUGH BRIDGE OR GRADE.

In case it is necessary to pass any dredge boat or other equipment through a bridge or grade of any railroad company or other corporation, county, township, or municipality, the board of directors shall give twenty days' notice to the owner of said bridge or grade that the same shall be removed temporarily to allow the passage of such equipment or that an agreement be immediately entered into in regard thereto. The owner of said bridge or grade shall keep an itemized account of the cost of the removal, and, if necessary, of the replacing of said bridge or grade, and said actual cost shall be paid by the district. In case the owner of said bridge or grade shall refuse to provide for the passage of said equipment, the board of directors may remove such bridge or grade at its own expense, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage. In case they shall be prevented from doing so, the owner of said bridge or grade shall be liable for damage for the resulting delay.

#### SECTION 22. MAY MAKE SURVEYS AND INVESTIGATIONS.

The board of directors shall also have the right to establish and maintain stream gages, rain gages, a flood warning service with telephone or telegraph lines or telephone or telegraph service, and may make such surveys and examinations of rainfall and flood conditions, stream flow, and other scientific and engineering subjects as are necessary and proper for the purposes of the district, and they may issue reports of their findings.



**SECTION 23. MAY CO-OPERATE WITH U. S. GOVERNMENT OR OTHER AGENCIES.—OUTLETS IN OTHER STATES.** The board of directors shall also have the right and authority to enter into contracts or other arrangements with the United States government or any department thereof, with persons, railroads or other corporations, with public corporations, and the state government of this or other states, with drainage, conservation, conservancy, or other improvement districts, in this or other states, for co-operation or assistance in constructing, maintaining, using and operating the works of the district or the waters thereof, not in violation of Article VIII of the constitution; or for making surveys and investigations or reports thereon; and may purchase, lease or acquire land or other property in adjoining states in order to secure outlets or for other purposes of this act, and may let contracts or spend money for securing such outlets or other works in adjoining states.

**SECTION 24. WATER POWER AND SUPPLY.** The rights of land-owners, municipalities, corporations, and other users of water to the waters of the district for domestic use, water supply, industrial purposes, for water power, or for any other purposes shall extend only to such rights as were owned by them prior to the organization of the district, and to such use as could be made of such waters if the improvements of the district had not been made. Wherever the organization of, or the improvements made by the district make possible a greater, better, or more convenient use of, or benefit from, the waters of the district for any purpose, the right of such greater, better, or more convenient use of, or benefit from, such waters shall be the property of the district; and such rights may be leased, sold, or assigned by the district in return for reasonable compensation.

Where the district is a riparian owner along the streams of the district, it shall have in addition the rights which go with riparian ownership.

All the rights and property of the district in the waters and water courses of the district, and in their uses, shall be exercised in such a manner as to promote the welfare of the district, and of



all inhabitants thereof, and to promote the safest and most economical and reasonable use of the waters thereof; to encourage and promote industries and agriculture, and to pay the cost of the construction and maintenance of the improvement. Charges for such use shall not be greater than are necessary to accomplish these purposes.

Persons, corporations, municipalities, or other parties desiring to secure such use of the waters or water courses of the district, or of the district rights therein, may make application to the board of directors for lease, purchase, or permission for such use. Such application shall state the purpose and character of such use, the period and degree of continuity of such use, the amount of water desired and the place of use. In case any party makes greater, better or more convenient use of the waters of the district without formal application, the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application had been made. Where it is not possible nor reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as may be determined by the board of directors, subject to the approval of the court. Preference shall be given, first, to domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and farm yard use, or for watering stock; second, to supplying water used in processes of manufacture, for the production of steam, for refrigerating, cooling and condensing, and for maintaining sanitary conditions of stream flow; third, for irrigation, power development, recreation, fisheries and for other uses.

The board of directors shall not permanently sell, lease, assign, permit or otherwise part with the control by the district of the use of the waters thereof, and rates for light, power or other services charged by vendees, assignees, lessees or licensees of such board of directors shall be subject at all times to revision and control by state law. Assignments, leases, sales or permissions may be made for periods of not greater than fourteen years. At the

termination of the period of such assignments, sales, leases, or permissions, they shall be renewed for a reasonable period not to exceed fourteen years, on the condition that a new determination is made of a reasonable charge therefor, as herein provided; unless there are other applications on file, the granting of which would result in filling a greater need or in a more reasonable use. In case such applications are on file, they shall have preference.

The board of directors may make regulations for the determination and measurement of the increased, or better, or more convenient use of, or benefit from the water supply of the district, for the purpose of determining rates of compensation, and for the purpose of securing to all parties interested the greatest and best use of the water thereof. The board shall have power to determine the rates of compensation for such greater, better, or more convenient use of, or benefit from the water supply of the district, which rates shall be reasonable, and may require bond to be given to secure the payment for such use. Upon the determination of any rate, or rates, the board shall make a report of its determination to the court. The court shall thereupon cause personal notice by summons to be given to the parties interested, stating that such a determination of rate has been made, that a hearing before the court will be had thereon on a certain day, and that objection may be made at such time to such determination of rates. A hearing may be had before the court, objections may be made and appeals taken in the same manner as in case of the appraisal of benefits. In case no appeal is made within the time provided, or upon the final determination of the matter by the court, the determination of such rates of compensation shall be conclusive and binding for the term and under the conditions specified in the lease or other agreement. In case of failure of any user to pay for use in the manner specified by order of the court, the board may compel payment, and may enjoin further use until such payment is made. The rights under any lease or sale shall not extend to a change of use, or of place, time, or manner of use, except in so far as is specifically stated in the lease or other agreement.

The compensation for greater, better, or more convenient use of, or benefit from the waters of the district, may be made by payment according to a unit price per cubic foot of water used, or by a unit price for theoretical horse power developed, or in any other reasonable measurement of value received by reason of the greater, better or more convenient use of, or benefit from, the waters of the district. All money received as compensation under the provisions of this paragraph shall be added to the funds of the district and used for defraying the expenses thereof.

As a basis for assessment of benefits due to a greater, better, or more convenient use of, or benefit from, the waters of the district, the directors of the district may cause a determination to be made of the conditions of the water supply and of the water courses of the district as they were before the improvements were made, or as they existed at any subsequent time, and they may make a determination of all rights, property, easements, or other interests in the waters, or the water courses of the district — such determination being based upon records of greatest and least flow, upon the evidence of use, or evidence of legal rights, and upon any other evidence and records which may be available. Upon the completion of such determination, the directors of the district shall make their report thereon to the court. Thereupon notice shall be given of the pendency of said report and a hearing thereon, which notice and hearing shall conform as nearly as possible to the notice and hearing on appraisals of benefits and of land to be taken, and the same right of appeal shall exist. Upon the determination of the matter by the court, its findings shall be conclusive, and shall be the basis of any future assessment for the use of the waters of the district, provided that in case any party shall thereafter establish in court any right or property in the waters of the district, or the use thereof, which has not been adjudicated, the existence of such right, or the failure to adjudicate it, shall not affect the operation of this provision nor the findings of the court thereon in any other particular. The rights of the district to the waters of the district, or the use thereof, or to the land within the district and owned by

it, shall not be lost by the district by prescription or by adverse possession.

The appraisal of benefits made by the appraisers of the district shall not include benefits for such greater, better or more convenient use of, or benefit from, the waters of the district, but the compensation for such use or benefits shall be made according to the provisions of this section.

SECTION 25. CEMETERIES. Whenever it may be necessary for the purposes of a district to take or damage any cemetery, the appraisers of the district shall appraise the cost of such taking or easement in the same manner as appraisals are made for other property.

Said directors shall have the same powers in case of the removal of a cemetery to agree with the authorities owning or controlling the said cemetery in the same manner that township trustees are authorized by section 3465 of the General Code; and in case of agreement the directors may purchase the necessary land, and remove or contract for the removal of those buried, together with all monuments. They may also contract for an easement therein if removal is not desired.

All proceedings in regard to such cemeteries shall be in conformity with the order of the court. In case condemnation proceedings are necessary they shall be instituted and conducted according to law in the county where such cemeteries are located.

#### IV. APPRAISALS OF BENEFITS.

SECTION 26. APPOINTMENT OF APPRAISERS. At the time of making its order organizing the district or at any suitable time thereafter, either in term or in vacation, the court or judge shall appoint three appraisers, who shall in every case where appraisers are appointed under this act be recommended by the board of directors, and whose duty it shall be to appraise the lands or other property within and without the district to be acquired for rights of way, reservoirs and other works of the district, and to appraise all benefits and damages accruing to all lands within or without

the district by reason of the execution of the official plan. Said appraisers shall be freeholders residing within the State of Ohio, who may or may not own lands within said district. Each of the appraisers shall, before taking up his duties, take and subscribe to an oath that he will faithfully and impartially discharge his duties as such appraiser, and that he will make a true report of such work done by him. The said appraisers shall at their first meeting elect one of their own number chairman, and the secretary of the board of directors or his deputy shall be ex-officio secretary of said board of appraisers during their continuance in office. A majority of the appraisers shall constitute a quorum, and a concurrence of the majority in any matter within their duties shall be sufficient for its determination. Said appraisers shall continue to hold their offices until excused by the court, and the court shall fill all vacancies in the board of appraisers, or may appoint a new board for subsequent appraisals, as occasion may require. Such new board, if appointed, shall fill all the requirements of the board of appraisers of the district, and perform its duties.

SECTION 27. APPRAISALS. During the preparation of the official plan, the board of appraisers shall examine and become acquainted with the nature of plans for the improvement and of the lands and other property affected thereby, in order that they may be better prepared to make appraisals.

When the official plan is filed with the secretary of the district he shall at once notify the board of appraisers, and they shall thereupon proceed to appraise the benefits of every kind to all real property within or without the district, which will result from the organization of said district and the execution of the official plan; and also to appraise the damages sustained and the value of the land and other property necessary to be taken by the district for which settlement has not been made by the board of directors. In the progress of their work, they shall have the assistance of the attorney, engineers, secretary and other agents and employees of the board of directors.

The board of appraisers shall also appraise the benefits and damages, if any, accruing to cities, villages, counties, townships

and other public corporations, as political entities, and to the State of Ohio.

Before appraisals of compensation and damages are made, the directors of the district may report to the appraisers the parcels of land or other property they may wish to purchase; and for which they may wish appraisals to be made, both for easement and for purchase in fee simple. The board may, if it deems best, specify in case of any property the particular purpose for which and the extent to which an easement in the same is desired, describing definitely such purpose and extent. The appraisers shall appraise all damages which may, because of the execution of the official plan, accrue to real or other property either within or without the district, which damages shall also represent easements acquired by the district for all of the purposes of the district, unless otherwise specifically stated. Wherever instructed to do so by the board of directors, they shall appraise lands or other property which it may be necessary or desirable for the district to own, and when instructed by the directors to do so they shall appraise both the total value of the land, and also the damages due to an easement for the purposes of the district. Upon such appraisals being confirmed by the court, the directors of the district shall have the option of paying the entire appraised value of the property and acquiring full title to it (in fee simple), or of paying only the cost of such easement for the purposes of the district. The appraisers in appraising benefits and damages shall consider only the effect of the execution of the official plan. The appraisers in making appraisals shall give due consideration and credit to any other works or other systems of reclamation already constructed, or under construction, which form a useful part of the work of the district according to the official plan. Where the appraisers or a jury, in case one is called, return no appraisal of damages to any property, it shall be deemed a finding by them that no damages will be sustained.

SECTION 28. LAND AFFECTED OUTSIDE DISTRICT. If the appraisers find that lands or other property not embraced within the boundaries of the district will be affected by the proposed improve-

ment, or should be included in the district, they shall appraise the benefits and damages to such land, and shall file notice, in the court, of the appraisal which they have made upon the lands beyond the boundaries of the district, and to the land which in their opinion should be included in the district. The appraisers shall also report to the court any lands which in their opinion should be eliminated from the district.

**SECTION 29. NOTICE OF HEARING ON LAND EXCLUDED FROM OR TAKEN INTO DISTRICT.** If the report of the board of appraisers includes recommendations that other lands be included in the district, or that certain lands be excluded from the district, it shall be the duty of the clerk of the court before which the proceeding is pending to give notice to the owners of such property by publication to be made as provided in this act for a hearing on the petition for the creation of the district. Such notice to those owners whose lands are to be added to the district may be substantially as shown in the schedule herein. The time and place of the hearing may be the same as those of the hearing on appraisals. To the owners of property to be excluded from the district it will be sufficient to notify them of that fact.

**SECTION 30. BOARD SHALL MAKE REPORT.** The board of appraisers shall prepare a report of its findings which shall be arranged in tabular form and bound in book form, and which shall be known as the conservancy appraisal record. Such record shall contain the name of the owner of property appraised as it may appear on the tax duplicate or the deed records, a description of the property appraised, the amount of benefits appraised, the amount of damages appraised, and the appraised value of land or other property which may be taken for the purposes of the district. They shall also report any other benefits or damages or any other matter which in their opinion should be brought to the attention of the court. No error in the names of the owners of real property or in the descriptions thereof shall invalidate said appraisal or the levy of assessments or taxes based thereon, if sufficient description is given to identify such real property.



When their report is completed, it shall be signed by at least a majority of the appraisers and deposited with the clerk of the court who shall file it in the original case. At the same time copies of that part of the report giving the appraisal of benefits and appraisals of land to be taken and of damages, in any county shall be made, certified to, and filed with the clerk of the court of common pleas of such county.

SECTION 31. NOTICE OF HEARING ON APPRAISALS. Upon the filing of the report of the appraisers, the clerk of the court shall give notice thereof, as provided in this act, in each county in the district. Said notice shall be substantially as in form 6 of the schedules hereto attached. It shall not be necessary for said clerk to name the parties interested.

It shall not be necessary to describe separate lots or tracts of land in giving said notice, but it shall be sufficient to give such descriptions as will enable the owner to determine whether or not his land is covered by such description. For instance, it will be sufficient to state "All land lying in the . . . . . Ward of the City of . . . . .," or "All land abutting on . . . . . Street in the City of . . . . .," or "All land lying west of . . . . . River and east of . . . . . Railroad in . . . . . Township," or any other general description pointing out the lands involved.

Where lands in different counties are mentioned in said report, it shall not be necessary to publish a description of all the lands in the district in each county, but only of that part of the said lands situate in the county in which publication is made.

SECTION 32. HEARING ON APPRAISALS. Any property owner may accept the appraisals in his favor of benefits and of damages and of lands to be taken made by the appraisers, or may acquiesce in their failure to appraise damages in his favor, and shall be construed to have done so unless he shall within ten days after the last publication provided for in the preceding section file exceptions to said report or to any appraisal of either benefits or damages or of land to be taken which may be appropriated. All exceptions shall be heard by the court beginning not less than twenty nor more than thirty days after the last publication provided for herein, and de-



terminated in advance of other business so as to carry out, liberally, the purposes and needs of the district. The court may, if it deem necessary, return the report to the board of appraisers for their further consideration and amendment, and enter its order to that effect. If, however, the appraisal roll as a whole is referred back to the appraisers, the court shall not resume the hearing thereof without new notice, as for an original hearing thereon. But the court may, without losing jurisdiction over the roll, order the appraisers to recast the roll when the order of the court specifies the precise character of the changes thereof.

**SECTION 33. DECREE ON APPRAISALS.** If it appears to the satisfaction of the court after having heard and determined all said exceptions that the estimated cost of constructing the improvement contemplated in the official plan is less than the benefits appraised, then the court shall approve and confirm said appraisers' report as so modified and amended, and such findings and appraisals shall be final and incontestible. In considering the appraisals made by the board of appraisers, the court shall take cognizance of the official plan and of the degree to which it is effective for the purposes of the district. In case the court shall find that the estimated benefits appraised are less than the total costs of the execution of the official plan, exclusive of interest on deferred payments, or that the official plan is not suited to the requirements of the district, it may at its discretion return said official plan to the directors of the district with the order for them to prepare new or amended plans, or it may disorganize the district after having provided for the payment of all expenditures.

**SECTION 34. APPEAL FROM AWARD.** Any person, or public or private corporation desiring to appeal from an award as to compensation or damages or benefits, shall within ten days from the judgment of the court confirming the report of the appraisers, file with the clerk of the court a written notice making demand for a jury trial. He shall at the same time file a bond with good and sufficient security to be approved by the clerk in the sum of not more than two hundred dollars to the effect that if the appellant does not recover more by the verdict of the jury than the sum

awarded him by the appraisers or if the verdict is not more favorable to him, he will pay the costs of the appeal. He shall state definitely from what part of the order he appeals.

The appeal shall be from the award of compensation or damages or benefits, or one or more of them, but from no other part of the decree of the court.

In case more than one appeal is entered from the awards as to compensations or damages or benefits in the same county, the court may, upon a showing that the same may be consolidated without injury to the interests of any one, consolidate and try the same together.

Upon demand for a jury the court shall order the directors to at once begin condemnation proceedings, according to law, in the county in which the lands are situated which are sought to be condemned or appraised in the court of common pleas of such county, which suit shall be proceeded with in accordance with the statute regulating appropriation by other than municipal corporations. And said court shall have full jurisdiction to act.

In case an appeal is taken to a jury from the assessment of benefits, the court shall direct the directors to present a petition embodying the facts and the claim they make in short form, which shall be filed in the county in which the land is situated. Whereupon a jury shall be empaneled according to law to try the issue presented.

**SECTION 35. ENTRY AFTER DEPOSIT OF AWARD.** No property shall be taken under this act until compensation has been paid according to law. But where a trial is had by jury, and a verdict has been rendered which has been confirmed by the court, the board of directors may pay the amount allowed into court in money with the costs, and thereupon the court shall make an order admitting the said corporation into possession of the property and confirming its title thereto, although the owner may take steps to take the case to a higher court. And thereupon the board of directors may enter into undisturbed possession of the property and rights involved.

**SECTION 36. FILING DECREE.** Upon the entry of the order of the court approving the report of the appraisers, as provided

for in this act, the clerk of said court in which the same is entered shall transmit a certified copy of the said decree, and of the appraisals as confirmed by the court, except those parts from which appeals have been perfected but not determined, to the secretary of the district.

When any appeal has been finally determined, the clerk of that court shall certify the amount of each item of the judgment to the clerk of the court having the original case, who shall file the same therein and thereupon transmit certified copies of the same as in this section above provided.

**SECTION 37. CHANGE OF OFFICIAL PLAN.** The board of directors may at any time, when necessary to fulfill the objects for which the district was created, alter or add to the official plan, and when such alterations or additions are formally approved by the board and by the court, and are filed with the secretary, they shall become parts of the official plan for all purposes of this act. Where such alterations or additions in the judgment of the court neither materially modify the general character of the work, nor materially increase resulting damages for which the board is not able to make amicable settlement, nor increase the cost more than ten per cent., no action other than a resolution of the board of directors shall be necessary for the approval of such alterations or additions. In case the proposed alterations or additions materially modify the general character of the work or materially modify the resulting damages or materially reduce the benefits, for which the board is not able to make amicable settlement, or materially increase the benefits in such a manner as to require a new appraisal, or increase the cost more than ten per cent., the court shall direct the board of appraisers (which may be the original board, or a new board appointed by the court on petition of the board of directors or otherwise), to appraise the property to be taken, benefited or damaged, by the proposed alterations or additions. Upon the completion of the report by the board of appraisers, notice shall be given and a hearing had on their report in the same manner as in the case of the original report of the board of appraisers, and the same right of appeal to a jury shall exist. Provided: That where

few land owners are affected, the clerk of the court may, on order of the court, if found to be more economical and convenient, give personal notice of the pendency of the report of said appraisers, instead of notice by publication; and Provided: That when the only question at issue is additional damages or reduction of benefits to property, due to modifications or additions to the plans, the board of directors may, if they find it practicable, make settlements with the owners of the property damaged, instead of having appraisals made by the board of appraisers. In case such settlements are made, notice and hearing need not be had. After bonds have been sold, in order that their security may not be impaired, no reduction shall be made in the amount of benefits appraised against property in the district, but in lieu of such reductions in benefits, if any are made, the amount shall be paid to the party in cash. This provision shall apply to all changes in appraisals under this act.

**SECTION 38. APPEALS NOT TO DELAY PROCEEDINGS.** No appeal under this act shall be permitted to interrupt or delay any action or the prosecution of any work under this act, except where the party appealing is entitled to a jury under the constitution of the state, and such jury trial has not been had; in which case, only so much of the work shall be interrupted or delayed as would constitute a taking of or a damaging of the property of the appellant.

The board of directors of any district organized under the terms of this act shall have the right to appeal from any order of the court of common pleas made in any proceeding under this act, not requiring the intervention of a jury.

The failure to appeal from any order of the court in any proceedings under this act within the time specified herein shall constitute a waiver of any irregularity in the proceedings, and the remedies provided for in this act shall exclude all other remedies except as herein provided.

**SECTION 39. LANDS EXEMPT AND LATER LIABLE TO ASSESSMENT.** If any lands in any district organized under this act are not liable for taxation or assessment at the time of the execution of the work, but afterwards, during the period when such work is

being paid for, become liable to taxation or assessment by reason of some change in condition or ownership, such lands shall thereupon be appraised and assessed as other lands in said district receiving equal benefits.

**SECTION 40. SUBSEQUENT APPRAISALS.** In case any real property within or without any district is benefited which for any reason was not appraised in the original proceedings, or was not appraised to the extent of benefits received, or in case any individual, corporation, municipality, political subdivision, or other district shall make use of or profit by the works of any district organized under this act to a degree not compensated for in the original appraisal, or in case the directors of the district find it necessary, subsequent to the time when the first appraisals are made, to take or damage any additional property, the directors of said district, at any time such condition becomes evident, shall direct the board of appraisers to appraise the benefits or the enhanced benefits received by such property, or such damages or value of property taken, and proceedings outlined in this act for appraising lands not at first included within the boundaries of the district shall in all matters be conformed with, including notice to the party or parties. Or the board may, at its discretion, make any suitable settlement with such individual, other district, corporation, county or municipality for such use, benefit, damage or property taken.

**SECTION 41. PROCEEDINGS NOT INVALID.** No fault in any notice or other proceedings shall affect the validity of any proceeding under this act except to the extent to which it can be shown that such fault resulted in a material denial of justice to the property owner complaining of such fault.

In case it is found upon a hearing that by reason of some irregularity or defect in the proceedings the appraisal has not been properly made, the court may nevertheless, on having proof that expense has been incurred which is a proper charge against the property of the complainant, render a finding as to the amount of benefits to said property, and appraise the proper benefits accordingly, subject to a claim for a jury as already provided, where the party is entitled thereto, and thereupon said land shall be assessed

as other land equally benefited. In the event that at any time either before or after the issuance of bonds pursuant to the provisions of this act, the appraisal of benefits, either as a whole or in part, be declared by any court of competent jurisdiction to be invalid by reason of any defect or irregularity in the proceedings therefor, whether jurisdictional or otherwise, the said court of common pleas is hereby authorized and directed on the application of the board of directors of the said district or on the application of any holder of any bonds which may have been issued pursuant hereto, promptly and without delay to remedy all defects or irregularities as the case may require, by directing and causing to be made in the manner hereinbefore provided, a new appraisal of the amount of benefits against the whole or any part of the lands in the said district as the case may require.

## V. FINANCIAL ADMINISTRATION.

SECTION 42. FUNDS. The moneys of every conservancy district organized hereunder shall consist of three separate funds: (1) Preliminary Fund, by which is meant the proceeds of the ad valorem tax authorized by this act and such advancements as may be made from the general county funds as provided in section 4<sup>th</sup> of this act; (2) Bond Fund, by which is meant the proceeds of levies made against the special assessments of benefits equalized and confirmed under the provisions of this act; and (3) Maintenance Fund, which is a special assessment to be levied annually for the purpose of upkeep, administration and current expenses as hereinafter provided. It is intended that the cost of preparing the official plan, the appraisal (except as paid out of the preliminary fund) and the entire cost of construction and superintendence, including all charges incidental thereto, and the cost of administration during the period of construction, shall be paid out of the bond fund.

No vouchers shall be drawn against the preliminary fund (except for advances from the general county funds) or against the maintenance fund until a tax-levying resolution shall have been properly passed by the board of directors, and duly entered upon

its records; no bonds shall be issued against the bond fund until an assessment-levying resolution shall have been properly passed by the board of directors and duly entered upon its records, and until the property owners shall have been given an opportunity for a period of not less than thirty days to pay the assessments so levied against their respective properties.

**SECTION 43. PRELIMINARY EXPENSES.—HOW PAID.** After the filing of a petition under this act, and before the district shall be organized, the costs of publication and other official costs of the proceedings shall be paid out of the general funds of the county in which the petition is pending. Such payment shall be made on the warrant of the auditor on the order of the court. In case the district is organized, such cost shall be repaid to the county out of the first funds received by the district through levying of taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, then the cost shall be collected from the petitioners or their bondsmen. Upon the organization of the district, the court shall make an order indicating a preliminary division of the preliminary expenses between the counties included in the district in approximately the proportions of interest of the various counties as may be estimated by said court. And the court shall issue an order to the auditor of each county to issue his warrant upon the treasurer of his county to reimburse the county having paid the total cost.

Expenses incurred thereafter prior to the receipt of money by the district from taxes or assessments, bond sales, or otherwise, shall be paid from the general funds of the counties upon the order of the court and upon certification of the clerk of the court of such order specifying the amount and purpose of the levy, to the auditor of each county, who shall thereupon at once issue his warrant to the treasurer of his county, said payments to be made in proportion of the order outlined by the court aforesaid. Upon receipt of funds by the district from the sale of bonds or by taxation or assessment the funds so advanced by the counties shall be repaid.

As soon as any district shall have been organized under this act, and a board of directors shall have been appointed and qual-



ified, such board of directors shall have the power and authority to levy upon the property of the district not to exceed three-tenths of a mill on the assessed valuation thereof as a level rate to be used for the purpose of paying expenses of organization, for surveys and plans, and for other incidental expenses which may be necessary up to the time money is received from the sale of bonds or otherwise. This tax shall be certified to the auditors of the various counties and by them to the respective treasurers of their counties. If such items of expense have already been paid in whole or in part from other sources, they may be repaid from the receipts of such levy, and such levy may be made although the work proposed may have been found impracticable or for other reasons is abandoned. The collection of such tax levy shall conform in all matters to the collection of taxes and assessments for the district outlined in this act, and the same provisions concerning the non-payment of taxes shall apply. The board may borrow money in any manner provided for in this act, and may pledge the receipts from such taxes for its repayment, the information collected by the necessary surveys, the appraisal of benefits and damages, and other information and data being of real value and constituting benefits for which said tax may be levied. In case a district is disbanded for any cause whatever before the work is constructed, the data, plans and estimates which have been secured shall be filed with the clerk of the court before which the district was organized and shall be matters of public record available to any person interested.

**SECTION 44. MAY BORROW MONEY.** In order to facilitate the preliminary work, the board may borrow money at a rate of interest not exceeding six per cent. per annum, may issue and sell or pay to contractors or others, negotiable evidence of debt (herein called warrants) therefor signed by the members of the board, and may pledge (after it has been levied) the preliminary tax of not exceeding three-tenths of a mill for the repayment thereof. If any warrant issued by the board of directors is presented for payment and is not paid for want of funds in the treasury, that fact with the date of refusal shall be endorsed on the back of such warrant, and said warrant shall thereafter draw interest at the rate of six per



cent. until such time as there is money on hand sufficient to pay the amount of said warrant with interest.

SECTION 45. BOARD OF DIRECTORS TO LEVY ASSESSMENT FOR BOND FUND. — ADDITIONAL LEVIES. After the list of real property, with the appraised benefits as approved by the court, or that part thereof from which no appeal is pending, has been filed with the secretary of the district, then from time to time, as the affairs of the district demand it, the board of directors shall levy on all real property, upon which benefits have been appraised, an assessment of such portion of said benefits as may be found necessary by said board to pay the cost of the execution of the official plan including superintendence of construction and administration, plus ten per cent. of said total, to be added for contingencies, but not to exceed, in the total of principal, the appraised benefits so adjudicated. The said assessment shall be apportioned to and levied on each tract of land or other property in said district in proportion to the benefits appraised, and not in excess thereof, and in case bonds are issued as provided herein and hereafter, then the amount of interest, which will accrue on such bonds, as estimated by said board of directors, shall be included in and added to the said assessment, but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the cost of construction in determining whether or not the expenses and costs of making said improvement are or are not equal to or in excess of the benefits appraised. As soon as said assessment is levied, the secretary of the board of directors, at the expense of the district, shall prepare in duplicate an assessment record of the district. It shall be in a well-bound book endorsed and named, "Conservancy Assessment Record of . . . . . District." It shall contain in tabular form a notation of the items of property appraised, the total amount of benefits appraised against each item, and the total assessment levied against each item. Where successive levies of assessment are made for the bond fund, the conservancy assessment record shall contain suitable notation to show the number of levies and the amount of each, to the end that the conservancy as-

assessment record may disclose the aggregate of all levies for the bond fund made up to that time.

Upon the completion of such record it shall be signed and certified by the president and secretary of the board of directors, attested by the seal of the district, and the same shall thereafter become a permanent record in the office of said district. A copy of that part of the conservancy assessment record affecting lands in any county shall be filed with the auditor of such county.

If it should be found at any time that the total amount of assessments levied is insufficient to pay the cost of works set out in the official plan or of additional work done, the board of directors may make an additional levy to provide funds to complete the work, provided the total of all levies of such assessment exclusive of interest does not exceed the total of benefits appraised.

**SECTION 46. PROPERTY OWNERS MAY PAY ASSESSMENT IN FULL.** When the assessment roll is placed on file in the office of the district, notice by publication shall be given to property owners that they may pay their assessments. Any owner of real property assessed for the execution of the official plan under the provisions of this act shall have the privilege of paying such assessment to the treasurer of the board of directors within thirty days from the time such assessment is placed on file in the office of the district, and the amount to be paid shall be the full amount of the assessment less any amount added thereto to meet interest. When such assessment has been paid, the secretary of the board shall enter upon the said assessment record opposite each tract for which payment is made the words "Paid In Full," and such assessment shall be deemed satisfied. The payment of such assessment shall not relieve the land owner from the necessity for the payment of a maintenance assessment nor for payment of any further assessment which may be necessary as herein provided. Any property owner failing to pay assessments in full as provided for herein shall be deemed to have consented to the issuance of bonds as provided for in this act, and to payment of interest thereon.

After the expiration of the period of thirty days within which the property owners may pay their respective assessments, as

limited herein, the treasurer of the district shall certify to the board of directors the aggregate of the amount so paid, and thereupon the board of directors shall pass and spread upon their records a bonding resolution in which shall be stated the amount of the assessment, and the amount thereof paid as aforesaid, and thereupon the board shall in the same resolution apportion the uncollected assessment into installments or levies, provide for the collection of interest upon the unpaid installments, and they may order the issuance of bonds (in an amount not exceeding ninety per cent. of the levy) in anticipation of the collection of said installments. The residue of the tax so levied (not less than ten per cent.) shall constitute a contingent account to protect the bonds from casual default, and any part thereof in excess of ten per cent. of the next installment of maturing bond principal, together with the next two installments of semi-annual interest, if not needed for this purpose, may be transferred from time to time to the maintenance fund of the district.

**SECTION 47. BOARD OF DIRECTORS MAY ISSUE BONDS. — HOW PAID. — FUNDS. — HOW TO BE USED.** The board of directors may, if in their judgment it seems best, issue bonds not to exceed ninety per cent. of the total amount of the assessments, exclusive of interest, levied under the provisions of this act, in denomination of not less than one hundred dollars, bearing interest from date at a rate not to exceed six per cent. per annum, payable semi-annually, to mature at annual intervals within thirty years, commencing not later than five years, to be determined by the board of directors, both principal and interest payable at the office of the treasurer of the State of Ohio. Said bonds shall be signed by the president of the board of directors, attested with the seal of said district and by the signature of the secretary of the said board, and shall be registered by the treasurer of the State of Ohio. In case any of the officers whose signatures, counter-signatures or certificates appearing upon bonds or coupons issued pursuant to this act, shall cease to be such officer before the delivery of such bonds to the purchaser, such signatures, or counter-signatures and certificates shall nevertheless be valid and sufficient for all purposes, the same as if they

had remained in office until the delivery of the bonds. All of said bonds shall be executed and delivered to the treasurer of said district, who shall sell the same in such quantities and at such dates as the board of directors may deem necessary to meet the payments for the works and improvements of the district. Said bonds, if bearing less than six per cent. interest, may be sold below par, but they shall be sold at such a price that the total payment of principal and interest shall not be greater than would have been required, if the bonds had borne six per cent. interest and had sold for par and accrued interest. They shall show on their face the purpose for which they are issued, and shall be payable out of money derived from the bond fund. A sufficient amount of the assessment shall be appropriated by the board of directors for the purpose of paying the principal and interest of bonds and the same shall, when collected, be set apart in a separate fund for that purpose and no other. All bonds and coupons not paid at maturity shall bear interest at the rate of six per cent. per annum from maturity until paid, or until sufficient funds have been deposited at the place of payment. Any expenses incurred in paying said bonds and interest thereon and reasonable compensation to the state treasurer for registering and paying same, shall be paid out of the other funds in the hands of the district treasurer and collected for the purpose of meeting the expenses of administration. It shall be the duty of said board of directors in making the annual assessment levy, as heretofore provided, to take into account the maturing bonds and interest on all bonds, and to make ample provision in advance for the payment thereof. In case the proceeds of the original tax assessment made under the provisions of this act are not sufficient to pay the principal and interest of all bonds issued, then the board of directors shall make such additional levy or levies as are necessary for this purpose, and under no circumstances shall any assessment levies be made that will in any manner or to any extent impair the security of said bonds or the fund available for the payment of the principal and interest of the same. Said district treasurer shall, at the time of taking office, execute and deliver to the president of the board of directors of the said district.

a bond with good and sufficient sureties, to be approved by the said board of directors, conditioned that he shall account for and pay over as required by law, and as ordered by said board of directors, any and all money received by him on the sale of such bonds, or any of them, or from any other source, and that he will only sell and deliver such bonds to the purchaser or purchasers thereof under and according to the terms herein prescribed, and that he will, when ordered by said board so to do, return to said board, duly cancelled, any and all bonds not sold, which said bonds shall remain in the custody of the said president of said board of directors, who shall produce the same for inspection or for use as evidence whenever and wherever legally requested so to do. The said treasurer shall promptly report all sales of bonds to the board of directors, and the board shall issue warrants at the proper time for the payment of the maturing bonds so sold and the interest payments coming due on all bonds sold, and the said treasurer shall place sufficient funds at the place of payment to pay the same. In case proper warrants are not issued by the board of directors as herein provided, then the treasurer shall of his own accord place funds at the place of payment and the cancelled bonds and coupons and the receipts of the state treasurer shall be accepted in lieu of warrants. The successor in office of any such district treasurer shall not be entitled to said bonds or the proceeds thereof until he shall have complied with all the foregoing provisions applicable to his predecessor in office; provided, if it should be deemed more expedient to the board of directors, as to moneys derived from the sale of bonds issued or from any other source, said board may by resolution, select some suitable bank or banks or other depository, which depository shall give good and sufficient bond, as temporary or assistant treasurer or treasurers, to hold and disburse said moneys on the orders of the board as the work progresses, until such fund is exhausted or transferred to the treasurer by order of the said board of directors. For such deposits the district shall receive not less than two nor more than four per cent. interest per annum. The funds derived from the sale of said bonds or any of them shall be used for the purpose of paying the cost of the works and improve-

ments and such costs, expenses, fees and salaries as may be authorized by law and shall be used for no other purpose.

If at the time the bonds are ready to be issued, the board shall be of the opinion that such bonds cannot advantageously be issued and sold in whole or in part, the board may sell parts only of the entire issue or may pledge all or part of said issue as collateral to a loan, but no partial sale or pledge shall be made without the order of the board made and entered of record, and no pledge shall be made at a greater margin than at the rate of one hundred dollars of bond principal for ninety dollars of loan.

The district may secure the payment of loans from the United States government in the same manner as it may secure the payment of bonds, and the board of directors may make any necessary regulations to provide for such payment.

A party who has not sought a remedy against any proceeding under this act until after bonds have been sold or the work constructed, cannot for any cause have an injunction against the collection of taxes or assessments for the payment of said bonds.

This act shall, without reference to any other act of the Legislature of Ohio, be full authority for the issuance and sale of the bonds in this act authorized, which bonds shall have all the qualities of negotiable paper under the law merchant, and when executed and sealed and registered in the office of the state treasurer in conformity with the provisions of this act, and when sold in the manner prescribed herein and the consideration therefor received by the district, shall not be invalid for any irregularity or defect in the proceedings for the issue and sale thereof, and shall be incontestible in the hands of bona fide purchasers or holders thereof for value. No proceedings in respect to the issuance of any such bonds shall be necessary except such as are required by this act. Whenever the owner of any coupon bond issued pursuant to the provisions of this act shall present such bond to the treasurer of the district with a request for the conversion of such bond into a registered bond, the said treasurer shall cut off and cancel the coupons of any such coupon bond so presented and shall stamp, print or write upon such coupon bond so presented, either upon

the back or the face thereof, as may be convenient, a statement to the effect that the said bond is registered in the name of the owner and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter and from time to time, such bond may be transferred by such registered owner in person or by attorney duly authorized on presentation of such bond to the treasurer of the district and the bond again registered as before, a similar statement being stamped, printed or written thereon. Such statement stamped, printed or written upon any such bond may be substantially in the following form:

[Date, giving month, year and day]

This bond is registered pursuant to the statutes in such case made and provided, in the name of [here insert name of owner], and the interest and principal thereof are hereafter payable to such owner.

Treasurer.....Conservancy District.

If any bond shall be registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. The treasurer of the district shall enter in a register of said bonds to be kept by him or in a separate book, the fact of the registration of such bond and the name of the registered owner thereof, so that said register or book shall at all times show what bonds are registered and the name of the registered owner thereof.

SECTION 48. BOARD OF DIRECTORS MAY LEVY MAINTENANCE ASSESSMENT. To maintain, operate and preserve the reservoirs, ditches, drains, dunes, levees, canals or other improvements made pursuant to this act and to strengthen, repair and restore the same, when needed, and for the purpose of defraying the current expenses of the district, the board of directors may upon the substantial completion of said improvements and on or before the first day of September in each year thereafter, levy an assessment upon each tract or parcel of land and upon corporate property within the district, subject to assessments under this act, to be known as a "Conservancy Maintenance Assessment." Said maintenance assessment shall be apportioned upon the basis of



the total appraisal of benefits accruing for original and subsequent construction, shall not exceed one per cent. thereof in any one year unless the court shall by its order authorize an assessment of a larger percentage, and shall be certified in duplicate to the auditor of each county in which lands of said district are situate, in the same book but in a separate column, or in a separate book kept for that purpose, in like manner and at the same time as the annual installment tax is credited, under the heading "Maintenance Assessment." Said auditor shall certify the same to the treasurer of the county at the same time that he certifies the annual installment of the bond fund, and the sum of the installments of both funds for any tract may be certified as a single item. The treasurer shall demand and collect the maintenance assessment and make return thereof, and shall be liable for the same penalties for failure or neglect so to do, as may be provided herein for the annual installment of the assessment.

The amount of the maintenance tax paid by any parcel of land shall not be credited against the benefits assessed against such parcel of land; but the maintenance tax shall be in addition to any tax that has been or can be levied against the benefit assessment.

**SECTION 49. PETITION FOR READJUSTMENT OF MAINTENANCE ASSESSMENTS.** Whenever the owners or representatives of twenty-five per cent. or more of the acreage or value of the lands in the district shall file a petition with the clerk of the court in whose office the petition was filed, stating that there has been a material change in the values of the property in the district since the last previous appraisal of benefits, and praying for a readjustment of the appraisal of benefits for the purpose of making a more equitable basis for the levy of the maintenance assessment, the said clerk shall give notice of the filing and hearing of said petition in the manner hereinbefore provided.

Upon hearing of said petition if said court shall find there has been a material change in the values of property in said district since the last previous appraisal of benefits, the court shall order that there be a readjustment of the appraisal of benefits



for the purpose of providing a basis upon which to levy the maintenance assessment of said district. Thereupon the court shall direct the appraisers of the conservancy district to make such readjustment of appraisal in the manner provided in this act, and said appraisers shall make their report; and the same proceedings shall be had thereon, as nearly as may be, as are herein provided for the appraisal of benefits accruing for original construction: Provided, that in making the readjustment of the appraisal of benefits said appraisals shall not be limited to the aggregate amount of the original or any previous appraisal of benefits, and that after the making of such readjustment the limitation of the annual maintenance assessment to one per cent. of the total appraised benefits shall apply to the amount of the benefits as readjusted; and provided, further, that there shall be no such readjustment of benefits oftener than once in eight years.

SECTION 50. ANNUAL LEVY. The board of directors shall each year thereafter determine, order and levy the part of the total assessments levied under this act, which shall become due and be collected during each year at the same time that state and county taxes are due and collected, which annual levy shall be evidenced and certified by said board not later than September 1st each year to the auditor of each county in which the real property of said district is situate. The certificate of said annual levy shall be substantially as in the schedule herein.

Then shall follow a table or schedule showing in properly ruled columns: 1. The names of the owners of said property, which may be as they appeared in the decree of the court confirming the appraisals. In case of a city, county, village or township, the names of individual owners need not be given, but only the name of the city, county, village or township. 2. The descriptions of the property opposite the names of the said owners. 3. The total amount of the said annual installment of all assessments on each piece of property for the account of all funds. 4. A blank column in which the auditor shall record the several amounts as collected by him. 5. A blank column in which the auditor shall record the date of payment of the different sums.

6. A blank column in which the auditor shall report the names of the person or persons paying the several amounts.

The said certificate and report shall be prepared in triplicate in a well-bound book which shall be endorsed and named "Conservancy Assessment Book of ..... District, ..... County, Ohio," which endorsement shall also be printed at the top of each page in said book.

Two copies of that part of such triplicate affecting lands in any county shall be forwarded to the county auditor of such county, one for his use and one for the county treasurer, to whom the auditor shall certify one copy. It shall be the duty of the auditor of each county to receive the same as a tax book, and to certify the same as other tax records to the county treasurer of his county, whose duty it shall be to collect the same according to law. And such tax book or assessment book shall be the treasurer's warrant and authority to demand and receive the assessments due in his county as found in the same.

In the event of any failure or neglect of the board of directors of the district to determine and order an annual levy for the purpose of paying the interest and principal of any bonds pursuant to this act, it shall be the duty of the auditor of the county in which the lands subject to such assessments are situated, to make and complete a levy of the taxes or special assessments necessary for the said purpose against the lands in the said district, and each piece of property therein against which benefits shall have been appraised; any assessment so made and completed by the county auditor shall be made and completed by him in the manner hereinbefore provided for the making and completion of an assessment by the board of directors of the district, and shall have the same force and effect as a levy of assessments determined and ordered by the board of directors.

SECTION 51. DUTIES OF COUNTY OFFICERS. The county treasurer of each county in which lands of the district lie, shall make due report to the auditor of the county of the sums collected by him, and it shall be the duty of the auditor to issue his warrant payable to the treasurer of the district for all sums of money

in the hands of the treasurer of the county, according to his report as aforesaid. Said auditor shall, as soon as the books for collection are closed by the county treasurer according to law, make report to the treasurer of the said district of the sums collected, and of the assessments not collected, as returned to him by the treasurer of the county. The secretary of the board of directors shall thereupon provide a certified delinquent tax or assessment list, and forward the same in duplicate to the auditor of said county, who shall add the penalty fixed by law and transmit one copy to the treasurer of the county, who shall forthwith proceed to collect the said tax or levy or assessment and penalty, according to law.

All assessments or taxes provided for in this act, remaining unpaid after they become due and collectable, shall be delinquent and bear a penalty of two per cent. a month from the date of closing the county treasurer's books until paid.

The return of the auditor shall be verified by affidavit.

**SECTION 52. BOND OF COUNTY TREASURER.** Before receiving the aforesaid "assessment book" the treasurer of each county in which lands or other property of the district are located, shall execute to the board of directors of the district a bond with at least two good and sufficient sureties or a surety company, and which shall be paid for by the district in a sum not less than the probable amount of any annual levy of said assessment to be collected by him during any one year, conditioned that said treasurer shall pay over and account for all assessments so collected by him according to law. Said bond after approval by said board of directors shall be deposited with the secretary of the board of directors who shall be custodian thereof and who shall produce same for inspection and use as evidence whenever and wherever lawfully requested so to do.

**SECTION 53. CONSERVANCY ASSESSMENT TO CONSTITUTE A LIEN.**  
**- HOW EVIDENCED.** All conservancy assessments and taxes provided for in this act, together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee, to be fixed by the court and taxed as

costs in the action brought to enforce payment, shall, from date of filing the certificate herein described in the office of the auditor for the county wherein the lands and properties are situate, until paid, constitute a lien, to which only the lien of the state for general state, county, city, village, school and road taxes shall be paramount, upon all the lands and other property against which such taxes shall be levied as is provided in this act. Such lien may be evidenced by a certificate substantially in the form in the schedule herein. The certificate and tables shall be prepared in a well-bound book by the secretary of the board of directors at the expense of the district.

Unless expressly declared to the contrary, no warranty in any warranty deed or in any deed made pursuant to a judicial sale shall warrant against any portion of any assessment or assessments levied hereunder except past and current installments payable in the year which such deed or deeds bear date.

**SECTION 54. ASSESSMENT BOOK TO BE PRIMA FACIE EVIDENCE. — SUITS FOR ASSESSMENTS AND TAXES. — HOW BROUGHT.** The "Delinquent Conservancy Assessment Book" of the district shall be prima facie evidence in all courts of all matters therein contained. The liens established and declared in the preceding sections may be enforced at the option of the board of directors by an action on delinquent tax bills or assessment bills, made and certified by the county auditor, which action shall be instituted in the court of common pleas without regard to the amount of the claim, within six months after December 31st of the year for which said assessments were levied. The suit shall be brought in the corporate name of the district by its attorney against the land or lands, property or properties, on which such tax or assessment has not been paid. In the event of any default in the payment of the interest or principal of any bonds issued pursuant to this act, and if the said district or its proper officers shall fail or neglect to enforce the payment of any unpaid tax or assessment, the holder of such bonds may, for himself and for the benefit of all others similarly situated, enforce the said liens by suit or action against the land or lands, property or properties, on which

such tax or assessment has not been paid, and against the said district, and the court shall have full power, jurisdiction and authority to apply the said tax when collected in the payment of the interest or principal upon the said bonds as justice and equity may require. The suit shall be brought in the county in which the property is situate, except when the tract or property sued upon be in more than one county, in which event the suit may be brought on the whole tract, parcel or property, in any county in which any portion thereof may be situate. The pleadings, process, proceedings, practice and sales, in cases arising under this act shall, except as herein provided, be the same as in an action for the enforcement of the state's lien for delinquent general taxes upon real estate. All sales of lands made under this section shall be by the sheriff, as is now provided under the general law. All sheriff's deeds executed and delivered pursuant to this act shall have the same probative force as other deeds executed by a sheriff. Abbreviations shall not defeat the action. The title acquired through any sale of lands or other property under the aforesaid proceedings shall be subject to the lien of all subsequent annual installments of conservation or drainage tax or assessment. In all suits for the collection of delinquent taxes or assessments, the judgment for said delinquent taxes or assessments and penalty shall also include all costs of suit and a reasonable attorney's fee to be fixed by the court, recoverable the same as the delinquent tax and in the same suit. The proceeds of sales made under and by virtue of this act shall be paid at once to the aforesaid county treasurer and shall be properly credited and accounted for by him the same as other conservation taxes and assessments.

If any assessment made pursuant to the provisions of this act shall prove invalid, the board of directors shall by subsequent or amended acts or proceedings promptly and without delay remedy all defects or irregularities as the case may require by making and providing for the collection of new assessments or otherwise.

**SECTION 55. DUTIES OF OFFICERS AS TO ASSESSMENTS.** Whenever, under the provisions of this act, an assessment is made or a

tax levied against a county, city, village, or township, it shall be the duty of the governing or taxing body of such political subdivision, upon receipt of the order of the court which established the district, confirming the appraisal of benefits and the assessment based thereon, to receive and file the said order, and to immediately take all the legal and necessary steps to collect the same. It shall be the duty of the said governing or taxing body or persons to levy and assess a tax, by a uniform rate upon all the taxable property within the political subdivision, to make out the proper duplicate, certify the same to the auditor of the county in which such subdivision is, whose duty it shall be to receive the same, certify the same for collection to the treasurer of the county, whose duty it shall be to collect the same for the benefit of the conservancy district, all of said officers above named being authorized and directed to take all the necessary steps for the levying, collection and distribution of such tax.

Nothing in this section shall prevent the assessment of the real estate of other corporations or persons situated within such political subdivision, which may be subject to assessment for special benefits to be received.

In the event of any dissolution or disincorporation of any conservancy district organized pursuant to the provisions of this act, such dissolution or disincorporation shall not affect the lien of any assessment for benefits imposed pursuant to the provisions of this act, or the liability of any land or lands in such district to the levy of any future assessments for the purpose of paying the principal and interest of any bonds issued hereunder, and in that event, or in the event of any failure on the part of the officers of any district to qualify and act, or in the event of any resignations or vacancies in office, which shall prevent action by the said district or by its proper officers, it shall be the duty of the county auditor and of all other officers charged in any manner with the duty of assessing, levying and collecting taxes for public purposes in any county, municipality or political subdivision in which such lands shall be situated, to do and perform all acts which may be necessary and requisite to the collection of any such assessment

which may have been imposed and to the levying, imposing and collecting of any assessment which it may be necessary to make for the purpose of paying the principal and interest of the said bonds. Any holder of any bonds issued pursuant to the provisions of this act or any person or officers being a party in interest, may either at law or in equity by suit, action or mandamus, enforce and compel performance of the duties required by this act of any of the officers or persons mentioned in this act.

**SECTION 56. PENALTY FOR FAILURE OF TREASURER TO PAY OVER TAX.** If any county treasurer or other person entrusted with the collection of these assessments refuses, fails or neglects to make prompt payment of the tax or any part thereof collected under this act to the treasurer of said district upon his presentation of a proper demand, then he shall pay a penalty of ten per cent. on the amount of his delinquency; such penalty shall at once become due and payable and both he and his securities shall be liable therefor on his official bond. The said county treasurer shall retain for his services one per cent. of the amount he collects on delinquent taxes.

**SECTION 57. SURPLUS FUNDS AND ANNUAL REPORTS.** Any surplus funds in the treasury of the district may be used for retiring bonds, reducing the rate of assessment or for accomplishing any other of the legitimate objects of the district.

At least once a year, or oftener if the court shall so order, the board of directors shall make a report to the court of its proceedings and an accounting of receipts and disbursements to that date which shall be filed with the clerk of the court. Thereupon the court shall order the auditing of said accounts by public accountants of recognized standing who shall file their report thereon with the clerk of the court.

**SECTION 58. COMPENSATION OF OFFICIALS UNDER THIS ACT.** Each member of the board of directors shall receive five dollars a day and his necessary expenses for the time actually employed in performing his duties. Each appraiser shall receive ten dollars a day and his expenses for the time actually employed in his duties. Before any duties devolve upon a county auditor or a county



treasurer under this act, the board of directors of the district shall consult them and agree upon the salaries for the extra clerical force, if any, required in their respective offices to carry out the requirements of the law by reason of the establishment of said district, and the said board of directors shall provide for and pay said salaries to said clerk or clerks, while engaged on the work of the district, which clerks shall be selected and appointed by each of said county officers for their respective offices. In case of disagreement as to the compensation of such extra clerical force, the matter shall be referred to the court for its determination.

## VI. INTERCORPORATE RELATIONS AND CONFLICT IN JURISDICTION.

**SECTION 59. LANDS IN MORE THAN ONE DISTRICT.** The same land, if conducive to public health, safety, convenience or welfare, may be included in more than one district and be subject to the provisions of this act for each and every district in which it may be included, provided, that no district shall be organized under this act in whole or in part within the territory of a district already organized under this act until the court or courts determine whether the public health, safety, convenience or welfare demand the organization of an additional district, or whether it demand that the territory proposed to be organized into an additional district shall be added to the existing district; and in case the proceedings concerning two or more such districts are before the court of common pleas of two or more counties, such determination shall be as provided in the next section.

**SECTION 60. JURISDICTION.** In case any district or districts are being organized within, or partly within and partly without, the same territory in which some other district or districts have been or are being organized, one common pleas judge of each county in which such districts have been or are being organized shall confer at the earliest convenient moment after they ascertain the possibility of a conflict in jurisdiction, the sitting to be had in the county having the largest assessed valuation in the proposed district or districts.



At such conference, the several judges shall determine to what extent the several districts should be consolidated or to what extent the boundaries should be adjusted in order to most fully carry out the purposes of this act; and they shall by suitable orders make such determination effective. In event notices have been issued or jurisdiction acquired in any proceeding concerning territory which is transferred to the court of common pleas of another county such notice shall not become void and jurisdiction so acquired shall not be lost; but in each case the court acquiring jurisdiction over such transferred territory shall hold the same without further notice, as if originally embraced in said district. At such conferences, the decision of the majority of the judges shall be necessary for the determination of any matter, and from such decision, or from a failure to decide, appeal may be taken.

The provisions of this and of the preceding section shall not operate to delay or to interrupt any proceeding under this act until the question of jurisdiction has been finally determined by the court or courts.

**SECTION 61. UNION OF DISTRICTS.** In case two or more districts have been organized under this act in a territory, which, in the opinion of the directors of either of the districts, should constitute but one district, the board of directors of any one of the districts may petition the court for an order uniting said districts into a single district. Said petition shall be filed in the office of the clerk of that county which has the greatest valuation of real property within the districts sought to be included, as shown by the tax duplicates of the respective counties. Said petition shall set forth the necessity for such union of the two or more districts and that the union of said districts would be conducive to the public health, convenience, safety or welfare, and to the economical execution of the purposes for which the districts were organized. Upon receipt of said petition, the clerk of said court shall give notice by publication, or by personal service, to the board of directors or boards of directors of the district

or districts which it is desired to unite with the district of the petitioners. Such notice shall contain the time and place where the hearing on the petition will be had and the purpose of the same. Such hearing shall be had in accordance with the provisions of this act in original hearing. After the hearing, should the court find that the averments of the petition are true and that the said districts, or any of them, should be united, it shall so order, and thereafter such districts shall be united into one and proceed as such. The court shall designate the corporate name of such united district, and such further proceeding shall be taken as provided for in this act. The court shall direct in such order who shall be the directors of such united district, who shall thereafter have such powers and be subject to such regulations as are provided for directors in districts created in the first instance. All legal proceedings already instituted by or against any of such constituent districts may be revived and continued against such united district by an order of court substituting the name of such united district for such constituent district and such proceedings shall then proceed as herein provided.

Instead of organizing a new district from such constituent districts the court may, in its discretion, direct that one or more of such districts described in the petition be included into another of said districts which other shall continue under its original corporate name and organization, or it may direct that the district or districts so absorbed shall be represented on the board of directors of the original district, designating what members of the board of directors of the original district shall be retired from the new board and what members representing the included district or districts shall take their places; or it may direct that the included district or districts shall become subdistricts of the main district. In case the districts sought to be united were organized in different counties, then the court to determine the question involved shall consist of one judge from each of the counties in the court of which one of the districts was organized, and a majority shall be necessary to render a decision. From such a decision, or from a failure to decide, any interested property owner may app

No action under the provisions of this section shall operate to interrupt or delay any proceeding under this act until the questions involved are finally determined.

**SECTION 62. REMEDY FOR INJURY BY DISTRICT.** In case any person or public corporation, within or without any district organized under this act, shall consider itself injuriously affected in any manner whatsoever by any act performed by any official or agent of such district, or by the execution, maintenance or operation of the official plan, and in case no other method of relief is offered under this act, the remedy shall be as follows:

The person or public corporation considering itself to be injuriously affected shall petition the court before which said district was organized for an appraisal of damages sufficient to compensate for such injuries. The court shall thereupon direct the board of appraisers of the district to appraise said damages and injuries, and to make a report to the court on or before the time named in the order of the court. Upon the filing of said report of said board of appraisers, the court shall cause notice to be given to the petitioner and to the directors of the district, of a hearing on said report. At the time of such hearing, the court shall consider said report of said appraisers, and may ratify said report or amend it as the court may deem equitable, or may return it to the said board of appraisers and require them to prepare a new report. Upon the filing of an order of the court approving said report of said appraisers, with such modifications as it may have made, said order shall constitute a final adjudication of the matter unless it shall be appealed from within twenty days. Appeal to a jury from said order may be had as provided in the general appropriation statute by the petitioner, by the directors of the district, or by any person or corporation who has been assessed for the costs of the district. No damages shall be allowed under this section which would not otherwise be allowed in law.

**SECTION 63. SUBDISTRICTS.** Whenever it is desired to construct improvements wholly within or partly within and partly without any district organized under this act, which improvements will affect only a part of said district, for the purpose of

accomplishing such work, subdistricts may be organized upon petition of the owners of real property, within or partly within and partly without the district, which petition shall fulfill the same requirements concerning the subdistricts as the petition outlined in section 3 of this act is required to fulfill concerning the organization of the main district, and shall be filed with the clerk of the same court of common pleas, and shall be accompanied by a bond as provided for in section 4 of this act. All proceedings relating to the organization of such subdistricts shall conform in all things to the provisions of this act relating to the organization of districts. Whenever the court shall by its order duly entered of record declare and decree such subdistricts to be organized, the clerk of said court shall thereupon give notice of such order to the directors of the district, who shall thereupon act also as directors of the subdistrict. Thereafter, the proceedings in reference to the subdistrict shall in all matters conform to the provisions of this act; except that in appraisal of benefits and damages for the purposes of such subdistricts, in the issuance of bonds, in the levying of assessments or taxes, and in all other matters affecting only the subdistrict, the provisions of this act shall apply to this subdistrict as though it were an independent district, and it shall not, in these things, be amalgamated with the main district.

The board of directors, board of appraisers, chief engineer, attorney, secretary and other officers, agents and employees of the district shall, so far as it may be necessary, serve in the same capacities for such subdistrict, and contracts and agreements between the main district and the subdistrict may be made in the same manner as contracts and agreements between two districts. The distribution of administrative expense between the main district and subdistrict shall be in proportion to the interests involved and the amount of service rendered, such division to be made by the board of directors with an appeal to the court establishing the district. This section shall not be held to prevent the organization of independent districts for local improvements

under other laws within the limits of a district organized under this act, as provided in sections 59 and 60 of this act.

**SECTION 64. HOW OTHER IMPROVEMENTS MAY COME UNDER THIS ACT.** Any territory in which a proceeding has been instituted or is pending for the construction of a single or joint or interstate, county ditch, or township ditch, or underground drain, or levee, or county sewer, or for the cleaning of drains and water courses, or for the removal of drift, or for the drainage of marshes; or for any sewer district outside of a municipality, organized under any other law of this state, may become a district or subdistrict under this act or may be absorbed in and amalgamated with any district organized under the terms of this act in the following manner:

When the officials in charge of any such improvement, or the board of directors of any district organized under this act, which may desire to annex or absorb such territory, petition the court in which such district was organized under this act, or the court having jurisdiction over all or part of the territory affected by the proceeding which is desired to bring under this act, for an order making the territory affected by any of the improvements above noted a district or subdistrict under the terms of this act, or for amalgamating such territory with an existing district, organized under the terms of this act, the clerk of the court shall give notice of the pendency of said petition and of a hearing thereon in the same manner as herein provided for notice and hearing on a petition for the organization of a district under this act. At the time of such hearing the court shall hear the evidence and shall grant the petition or deny the same as seems most advantageous to all the interests affected thereby. The court in its order shall specify whether such territory shall be organized into a district or subdistrict under the terms of this act, or whether it shall be absorbed in or amalgamated with an existing district, organized under this act. Thereafter the territory affected by said order and the improvements for which said territory was assessed, or for which contracts have been let therein, shall be subject to the terms of this act, and all such orders and pro-

cedures shall be had, as are necessary for fulfilling the requirements of this act: Provided, that no order of the court shall be made under this section, which shall lessen the security of any issue of bonds or other obligations issued under the terms of this or any other statute.

If a proceeding sought to be joined to or amalgamated with a proceeding under this act is under the jurisdiction of a common pleas court other than the one having jurisdiction of the district organized under this act, then at such hearing the common pleas judge or judges of the county or counties in which such ditch or other improvement is located shall sit with the judge in whose county the district was established under this act, and a majority of those sitting shall be necessary to a decision; and from such decision or from a failure to decide appeal may be taken.

## VII. POLICE POWERS AND REGULATIONS.

**SECTION 65. MAY POLICE DISTRICT.** The board of directors shall have the right to police the works of the district, and in times of great emergency may compel assistance in the protection of such works, and shall, also, have the right to prevent persons, vehicles or live stock from passing over the works of the district in any manner which would result in damage thereto.

**SECTION 66. INJURY TO SURVEY MARKS PROHIBITED.** The willful destruction, injury or removal of any bench marks, witness marks, stakes or other reference marks, placed by the surveyors or engineers of the district or by contractors in constructing the works of the district, shall be a misdemeanor, punishable by fine not exceeding one hundred dollars.

**SECTION 67. OWNERS LIABLE FOR DAMAGE TO DISTRICT.** All persons and corporations shall be liable for damage done to works of the district by themselves, their agents, their employees, or by their live stock. All persons guilty of willful damage shall be guilty of a misdemeanor, and shall be fined not to exceed five hundred dollars and costs, and shall be liable for all damages and costs. The board of directors shall have authority to repair such damage at the expense of the person or corporation committing it.

**SECTION 68. PENALTY FOR FRAUD.** The making of profit, directly or indirectly, by any officer of any district organized under this act, or by any other public officer within the state, out of any contracts entered into by the district, or use of any money belonging to a district by loaning it or otherwise using it, or by depositing the same in any manner, contrary to law, or by removal of any money by any such officer or by his consent and placing it elsewhere than is prescribed either by law or by the official acts of the board of directors, for the purpose of profit, shall constitute a felony, and on conviction thereof shall subject such officer to imprisonment in the state penitentiary for a term not exceeding two years, or a fine not exceeding five thousand dollars, or both fine and imprisonment, and the officer offending shall be liable personally and upon his official bond for all losses to such district and for all profits realized by such unlawful use of moneys.

**SECTION 69. OFFICIALS REMOVED FOR CAUSE.** Any director, appraiser or other officer of any district organized under this act may be removed for cause upon a motion filed in the original case where said district was organized, after a hearing.

**SECTION 70. PERFORMANCE OF DUTIES ENFORCED BY MANDAMUS.** The performance of all duties prescribed in this act concerning the organization and administration or operation of the district may be enforced against any officer or against any person or corporation refusing to comply with any order of the board by mandamus at the instance of the board or of any person or corporation interested in any way in such district or proposed district. And the board may institute such proceedings in the court of appeals in the first instance.

## VIII. IRRIGATION.

**SECTION 71. IRRIGATION.** Districts may be formed under the provisions of this act, for irrigation, by a substantial compliance with the terms as near as possible. But no such district in its construction or operation shall in any manner interfere



with works for the prevention of floods, or the drainage of lands, or materially diminish their protective value. And the court organizing such irrigation district shall require a statement in the petition and proof to the effect that the organization and operation of the same will not materially interfere with any works or plans for flood prevention or the drainage or protection of lands. Nor shall any improvement under this act deprive the owners of lands lying upon any stream of water, of the ordinary flow in said stream without compensation therefor.

Subject to the above, the board of directors shall have the same powers as are herein conferred generally by its provisions so far as applicable.

Taxes shall be levied and bonds issued as already provided, using the words "Conservancy Taxes" or "Bonds."

## IX. CONSTRUCTION AND INTERPRETATION.

SECTION 72. FAULTY NOTICE.—HOW CORRECTED. In any and every case where a notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void; but the court shall in that case order due notice to be given, and shall continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

In case any individual appraisal or appraisals, assessment or assessments, or levy or levies, shall be held void for want of legal notice, or in case the board may determine that any notice with reference to any land or lands may be faulty, then the board may file a motion in the original cause asking that the court order notice to the owner of such land or lands given and set a time for hearing as provided in this act. And in case the original notice as a whole was sufficient, and was faulty only with reference to publication as to certain tracts, only the owners of and persons interested in those particular tracts need be notified by such subsequent notice. And if the publication of any notice in any county



was defective or not made in time, republication of the defective notice need be had only in the county in which the defect occurred.

**SECTION 73. QUESTION OF VALIDITY ADVANCED IN COURTS.** All cases in which there arises a question of the validity of the organization of conservancy districts shall be advanced as a matter of immediate public interest and concern, and heard in all courts at the earliest practicable moment.

The court shall be open at all times for the purposes of this act.

**SECTION 74. TO BE LIBERALLY CONSTRUED.** This act being necessary for securing the public health, safety, convenience or welfare, and being necessary for the prevention of great loss of life and for the security of public and private property from floods and other uncontrolled waters, it shall be liberally construed to effect the control and conservation and drainage of the waters of this state.

**SECTION 75. IF PART DECLARED UNCONSTITUTIONAL.** In case any section or sections or part of any section of this act shall be found to be unconstitutional, the remainder of the act shall not thereby be invalidated, but shall remain in full force and effect.

**SECTION 76. WHAT OTHER ACTS ARE REPEALED.** All acts or parts of acts conflicting in any way with any of the provisions of this act, in regard to improvements of this or a similar character, or regulating or limiting power of taxation or assessment, or otherwise interfering with the execution of this law according to its terms, are hereby declared inoperative and ineffective as to this act, as if they did not exist. But all such laws and parts of laws shall not be in any other way affected by this law. This act shall not repeal the act passed April 10, 1913, and approved April 12, 1913, (volume 103, page 141, Ohio Laws), but it shall be an additional remedy.

**SECTION 77. SHORT FORMS AND ABBREVIATIONS.** For the sake of convenience:

(a) In any orders of court the words "The court now here finds that it hath jurisdiction of the parties to and of the subject matter of this proceeding" shall be equivalent to a

finding that each jurisdictional fact necessary to confer plenary jurisdiction upon the court, beginning with the proper signing and filing of the initial petition to the date of the order containing such recital, has been scrutinized by the court and has been found to meet every legal requirement imposed by this act.

(b) No other or further evidence of the legal hypothecation of the special tax to the payment of the bonds shall be required than the passage of a bonding resolution by the board of directors and the issuance of bonds in accordance therewith.

(c) In the preparation of any assessment or appraisal roll the usual abbreviations employed by engineers, surveyors and abstractors may be used.

(d) Where properly to describe any parcel of land, it would be necessary to use a long description, the appraisers, after locating the land generally, may refer to the book and page of the public record of any instrument in which the land is described, which reference shall suffice to identify for all the purposes of this act the land described in the public record so referred to.

(e) It shall not be necessary in any notice required by this act to be published to specify the names of the owners of the lands or of the persons interested therein; but any such notice may be addressed "To All Persons Interested" with like effect as though such notice named by name every owner of any lands within the territory specified in the notice and every person interested therein, and every lienor, actual or inchoate.

(f) Every district declared upon hearing to be a conservancy district shall thereupon become a political subdivision and a public corporation of the State of Ohio, invested with all the powers and privileges conferred upon such districts by this act.

## X. SCHEDULE.

SECTION 78. FORMS AND SUGGESTIONS. The following forms may suffice to illustrate the character of the procedure contemplated by this act; and if substantially complied with, those things being changed which (to meet the requirements of the particular case) should be changed, such procedure shall be held to meet the requirements of this act.

## 1. Form of notice of hearing on the petition:

To All Persons Interested:

Public Notice is Hereby Given:

1. That on the .... day of ....., 19.., pursuant to the provisions of The Conservancy Act of Ohio, there was filed in the office of the Clerk of the Court of Common Pleas of ..... County, Ohio, the petition of ..... and others for the establishment of a Conservancy District to be known as ..... CONSERVANCY DISTRICT. [Here insert the purposes.]

2. That the lands sought to be included in said District comprise lands in ..... and ..... Counties, Ohio, described substantially as follows:

Beginning on the north line of ..... County at its point of intersection with the west bank of the ..... River; thence west along the north line of ..... County to the high bluffs facing said ..... River on the west; thence following the base of the line of said bluffs to the north line of the right of way of the ..... Railroad; thence west along the north right of way line of said railroad to the center line of ..... avenue in the Village of .....; thence south along the center line of ..... avenue to the ..... Pike; thence southeasterly along the ..... Pike to the southeasterly line of the right of way of the ..... Railroad; thence southeasterly along said right of way line to the corporate limits of the City of .....; thence with said corporation line southerly, easterly and northerly to the southerly right of way line of the main track of the ..... Railroad; thence easterly along said last named right of way line to the boundary line between ..... Coun-

ties; thence north along said county line to the southerly line of  
 ..... County; thence easterly along the dividing line between  
 ..... Counties to the easterly line of the right of way of the  
 ..... Railroad; thence northerly along said right of way line  
 to its intersection with the ..... Pike; thence westerly along  
 said Pike to the center line of the bridge over ..... Creek;  
 thence up said creek and along the center line thereof to the north  
 line of ..... County; thence west to the place of beginning.

Or, if found more convenient, the lands sought to be included  
 in the District may be described as follows:

All of Township ..... in Range ..... between the  
 ..... Railroad and the ..... River; the following lands  
 in ..... Township and ..... Range: Section .....  
 and the ..... half of Section .....; also all lands within  
 the corporate limits of the City of ..... etc., etc., etc.

3. That a public hearing on said petition will be had in said  
 court on ..... the ..... day of ....., at the  
 hour of ..... o'clock .... M. by the Court of Common Pleas  
 of ..... County, at the Court House in the City of .....  
 ..... County, Ohio.

All persons and public corporations owning or interested in  
 real estate within the territory hereinbefore described will be  
 given the opportunity to be heard at the time and place above  
 specified.

.....  
 Clerk of the Court of Common Pleas of  
 ..... County, Ohio.

Dated ....., Ohio, ....., 19....

## 2. Form of Finding on Hearing.

STATE OF OHIO, }  
 .....COUNTY. } ss

IN THE COURT OF COMMON PLEAS OF ..... COUNTY.  
 In Matter of

.....Conservancy District:

## FINDINGS AND DECREE ON HEARING.

On this ..... day of ....., 19..., this cause coming on for hearing upon the petition of ..... and others, for the organization of a conservancy district under the Conservancy Act of the State of Ohio, the Court, after a full hearing now here find:

1. That it hath jurisdiction of the parties to, and the subject matter of this proceeding.

2. That the purposes for which said district is established are,

[Insert the purposes.]

And that it is a public necessity.

3. That the public safety, health, convenience and welfare will be promoted by the organization of a conservancy district substantially as prayed in said petition, [if additional lands are added by petition] except, that the following additional lands at the petition of the owners thereof should be, and hereby are included in said district:

[Here insert additional lands.]

4. That the boundaries of said district as modified by the last finding herein are as follows: [Here insert corrected boundaries of district.]

5. That the said territory last above described should be erected into and created a conservancy district under the Conservancy Act of the State of Ohio under the corporate name of ..... Conservancy District.

Wherefore, it is by the Court ordered, adjudged, and decreed:

That the territory as above described be, and the same hereby is erected into and created a conservancy district under the Conservancy Act of Ohio under the corporate name of ..... Conservancy District, with its office or principal place of business at ....., in ..... County, Ohio. [If directors are appointed at the same time.] And the following persons are hereby appointed directors of said conservancy district:

....., for the term of three years,  
 ..... for the term of five years,  
 ..... for the term of seven years,

who are hereby directed to qualify and proceed according to law.

6. For consideration of other matters herein, this cause is retained on the docket.

.....Judge.

### 3. Form of Notice to Property Owners to Pay Assessment:

..... CONSERVANCY DISTRICT.

To All Persons Interested:

Public Notice Is Hereby Given:

1. That on the .... day of ....., 19..., the Board of Directors of ..... Conservancy District duly levied for the account of the Bond Fund of said District an assessment upon all the property in said District in the aggregate sum of ....., has caused the same to be extended upon the assessment duplicate of said District, and that said assessment duplicate is now in collection by the County Treasurer of the County in which the lands are situated.

2. That the entire assessment against any parcel of land may be paid at any time on or prior to ....., 19... without costs and without interest.

3. That as soon after the .... day of ....., 19... as conveniently may be, the Board of Directors of said District will divide the uncollected portion of said assessment into convenient installments and will issue bonds bearing interest not exceeding six per cent. per annum in anticipation of the collection of the several installments of said assessment, pursuant to the Conservancy Act of the State of Ohio.

.....  
 President.

.....  
 Secretary.

## 4. Form of Bond, and of Coupon.

(FORM OF BOND.)

No. ....

\$.....

UNITED STATES OF AMERICA

STATE OF OHIO

..... CONSERVANCY DISTRICT.

CONSERVANCY BOND.

KNOW ALL MEN BY THESE PRESENTS that .....  
 Conservancy District, a legally organized conservancy district of  
 the State of Ohio, acknowledges itself to owe and for value re-  
 ceived hereby promises to pay to bearer ..... Dollars  
 (\$.....) on the first day of ....., 19..., with  
 interest thereon from the date hereof until paid at the rate of  
 ..... per cent. per annum, payable ....., 19...,  
 and semi-annually thereafter on the first day of .....  
 and of ..... in each year on presentation and surrender  
 of the annexed interest coupons as they severally become due.  
 Both principal and interest of this bond are hereby made payable  
 in lawful money of the United States of America, at the office of  
 the Treasurer of the State of Ohio, in the City of Columbus, Ohio.

This bond is one of a series of bonds issued by .....  
 Conservancy District for the purpose of paying the cost of con-  
 structing a system of flood prevention [or for the other works]  
 for said district and in anticipation of the collection of the several  
 installments of an assessment duly levied upon lands within said  
 district and benefited by said improvement in strict compliance  
 with the Conservancy Act of Ohio, and pursuant to an order of  
 the Board of Directors of said District duly made and entered of  
 record.

And it is hereby certified and recited that all acts, conditions  
 and things required to be done in locating and establishing said  
 District and in equalizing appraisals of benefits and in levying  
 assessments against lands benefited thereby, and in authorizing,

executing and issuing this bond, have been legally had, done and performed in due form of law; that the total amount of bonds issued by said District does not exceed ninety per cent. of the assessments so levied and unpaid at the time said bonds are issued or any legal limitation thereof.

And for the performance of all the covenants and stipulations of this bond and of the duties imposed by law upon said district for the collection of the principal and interest of said assessments and the application thereof to the payment of this bond and the interest thereon, and for the levying of such other and further assessments as are authorized by law and as may be required for the prompt payment of this bond and the interest thereon, the full faith, credit and resources of said ..... Conservancy District are hereby irrevocably pledged.

IN TESTIMONY WHEREOF the Board of Directors of ..... Conservancy District has caused this bond to be signed by its President and sealed with the corporate seal of said District, attested by its secretary, and registered by the state treasurer of the state of Ohio, and the coupons hereto annexed to be executed by the fac-simile signatures of said president and secretary, as of the ..... day of ....., 19 .....

.....  
President.

Attest:

.....  
Secretary.

(FORM OF COUPON.)

\$.....

On the first day of { ..... } 19.....

Conservancy District promises to pay to bearer..... Dollars (\$.....) lawful money of the United States of America, at the office of the treasurer of the state of Ohio, Co-



habus, Ohio, being semi-annual interest due on that date on its  
Conservancy Bond dated . . . . ., 19. . . . .

No. . . . . President.

Secretary.

### 5. Form of Notice of Enlargement of District.

STATE OF OHIO,

COUNTY OF . . . . .

} ss.

IN THE COURT OF COMMON PLEAS,  
County, Ohio.

In the Matter of

. . . . . Conservancy District.

### NOTICE OF ENLARGEMENT OF DISTRICT.

To All Persons [and Public Corporations, if Any] Interested:

PUBLIC NOTICE IS HEREBY GIVEN:

1. That heretofore on the . . . . . day of . . . . ., 19. . . . ,  
the court of common pleas of . . . . . County, Ohio, duly en-  
tered a final decree erecting and creating . . . . . Conservancy  
District and appointing a board of directors therefor.

2. That thereafter this Court duly appointed

. . . . .  
. . . . .  
. . . . .

to be the Board of Appraisers for said District. That said Board  
of Appraisers on the . . . . . day of . . . . ., 19. . . . , filed their  
report recommending that the following described lands, not orig-  
inally included in the District, be added thereto:

[Here describe generally the lands which the Report of the Board of Appraisers recommends should be added to the District.]

3. That on . . . . ., the . . . . . day of . . . . ., 19. . . (or as soon thereafter as the convenience of the Court will permit) at the court house in . . . . . of . . . . ., Ohio, the court of common pleas of . . . . . County, Ohio, will hear all persons and public corporations, who are owners of or interested in the property described in this notice upon the question whether said lands should be added to and included in said . . . . . Conservancy District.

Clerk of the Court of Common Pleas  
of ..... County, Ohio.

## 6. Form of Notice of Hearing on Appraisals.

STATE OF OHIO, }  
COUNTY OF ..... } ss

IN THE COURT OF COMMON PLEAS,  
..... COUNTY, OHIO.

In the Matter of  
..... }  
Conservancy District. }

## NOTICE OF HEARING ON APPRAISALS.

**To All Persons and Public Corporations Interested:**

PUBLIC NOTICE IS HEREBY GIVEN:

1. That heretofore on the ..... day of ....., 19...  
the Court of Common Pleas of ..... County, Ohio, duly  
entered a decree erecting and creating ..... Conservancy  
District and appointing a Board of Directors therefor.

.....

.....

.....

...  
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lu  
n

STATE OF OHIO, }  
COUNTY OF ..... } ss.

To the Auditor of ..... County, Ohio:

This is to certify that by virtue and under the authority of THE CONSERVANCY ACT OF OHIO, the Board of Directors of ..... Conservancy District have and do hereby levy the sum of ..... Dollars for the account of the BOND FUND of said District, which said assessment bears interest as provided by law and is payable in installments as follows: [Here insert.]

You are further notified that for the account of the MAINTENANCE FUND for the year 19.... this Board has levied the sum of ..... Dollars.

The amounts of said levies upon the several parcels of land upon which the same are imposed are set forth upon the schedule hereunto attached, marked ..... Conservancy Assessment Book. The said assessments shall be collectable and payable the present year in the sums therein specified at the same time that the state and county taxes are due and collectable, and you are directed and ordered to require the Treasurer of ..... County, Ohio, to demand and collect such assessments at the time that he demands and collects the state and county taxes due on the same lands, and this Conservancy Assessment Book shall be your authority and the authority of the Treasurer to make such collection.

WITNESS the signature of the President of said Board of Directors, attested by the seal of said corporation, and the signature of its Secretary, this ..... day of ....., 19....

.....  
President.

.....  
Secretary.

## XI. EMERGENCY.

SECTION 79. EMERGENCY ACT. This act is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and safety. Such necessity exists by reason of the inadequacy of the present drainage systems of the state to

carry off unusual rainfalls in a proper and safe manner, as shown by the disastrous floods of March, 1913, which may occur again at any time in the near future with a like unfortunate result in loss of life and property. The existing laws of the state are not adequate to meet this emergency.

C. L. SWAIN,

*Speaker of the House of Representatives.*

W. A. GREENLUND,

*President of the Senate.*

Passed February 5, 1914.

Approved February 17, 1914.

JAMES M. COX, *Governor.*

Filed in the office of the Secretary of State February 17, 1914.

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IN THE  
**SUPREME COURT OF THE UNITED STATES**  
OCTOBER TERM, 1918

---

**No. 288**

---

LOUIS H. ORR

vs.

HENRY M. ALLEN ET AL.

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF OHIO.

---

**BRIEF OF APPELLEES**

---

A brief statement of the case may assist the Court in a proper understanding of the argument.

In the year 1912 the State of Ohio adopted, among other amendments to its constitution, the following, being Article II, Section 36:

**ARTICLE II**

*Sec. 36. Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also,*

*to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formation of drainage and conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and all other minerals.*

The floods of 1913, so fatal to life and property in the Miami valley, led to the adoption of the law which is in controversy. It was passed in February, 1914, and is composed of seventy-two (72) sections, numbered officially in the General Code of Ohio as Sections 6828-1 to 6828-73, each inclusive.

Laws of Ohio, Vol. 104, page 13

*(An accurate copy of this law in pamphlet form and index will be given each member of the Court, and Sections will be referred to without copying.)*

A petition was filed to establish the district, to be called The Miami Conservancy District. Strenuous resistance delayed its establishment until June, 1915. Successive attacks have been made upon its constitutionality, all of which have failed.

Deeds vs. Snyder, 91 Ohio State, 407

Miami Co. et al vs. Dayton et al 92 Ohio State, 215

Several decisions by the Court of Appeals were either not carried to the Supreme Court or affirmed or dismissed by it without report.

Koehne vs. Miami District, 63 Ohio Law Bull.  
page 20 (January 21, 1918)

Blevins vs. Miami District, 63 Ohio Law Bull.  
(page 212 (July 1, 1918)

The plan adopted involved the building of detention basins upon the Miami river and its tributaries, coupled with channel improvement through the cities. This scheme necessarily involves the acquisition of



property; and as the expense is to be borne by the property benefited, and not by direct taxation, questions arise as to assessments for that purpose. The district, as organized, consists of a narrow strip of ground along the streams covering the flooded district, but including the corporate limits of all cities and villages where they were flooded only in part. The land taken or benefited lies in nine counties, and the court is composed of one judge from each county. See the answer.

The complainant, Orr, is a citizen of California, and jurisdiction is thereby secured. The bill and answer being verified as required by law, the application for a temporary injunction was submitted to the court upon them, with the oral testimony of Mr. Ezra Kuhns, treasurer of the District, and Mr. Arthur Morgan, its engineer.

The complainant owns property below one of the dams, one parcel located in the city of Piqua, Miami County, and a farm in the same county. No property of his is to be taken. He objects to assessments for benefits upon the ground that the law is unconstitutional. He also claims that the construction of the works will constitute a serious and continuous menace to the safety and property of the inhabitants and the property of the people, etc., his own included, etc. This latter complaint will not appeal to the court.

The allegations in the bill are vague as to the particular questions he wishes to raise; and his assignments of error are much vaguer.

Specifically he charges that a tax for "preliminary expenses" will be levied (Item 5 of the bill). This allegation is denied by the answer and by the testimony of Mr. Kuhns. He repeats it in his assignment of errors. (Record page 20, item 5.)

Its propriety is definitely settled by the decisions in in

Miami Co. et al vs. Dayton et al, 92 Ohio State, 215  
 Houk vs. Drainage District, 239 U. S., 254

This point is therefore eliminated. The question does not exist.

He charges further in his bill, but not in the assignment of errors, that the law in question violates the following sections of the constitution of Ohio:

Article I, Section 16

Article I, Section 19

Article II, Section 26

Article II, Section 27

Article II, Section 1

and that it violates Section I of Article 14 of the constitution of the United States.

The sections of the State constitution referred to above are as follows:

## ARTICLE I

*Sec. 16. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.*

*Sec. 19. Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war, or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefore shall first be made in money, or first secured by a deposit of money, and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.*

## ARTICLE II

*Sec. 1. The legislative power of this state shall be vested in a General Assembly, which shall consist of a senate, and house of representatives, but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same on a referendum vote, etc.*

*Sec. 26. All laws, of a general nature, shall have a uniform operation throughout the state; nor shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except as otherwise provided in this constitution.*

*Sec. 27. The election and appointment of all officers, and the filling of all vacancies, not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as may be directed by law; but no appointing power shall be exercised by the General Assembly, except as prescribed in this constitution, and in the election of the United States senators; and in these cases the vote shall be taken "viva voce".*

The Supreme of Ohio has passed upon all these objections (if in their vague language, we can guess at their meaning), in the cases we have already cited above. A more recent case involved specifically the charge that the law was not of uniform operation throughout the state (covered by Article II, Section 26 of the Ohio Constitution) and was disposed of without report by the Supreme Court.

Blevins vs. Miami Conservancy District,

to be found in Ohio Law Bulletin of June 17, 1918, in report of proceedings in that court, on page 195; and in the same case a second ruling, to be found in the Ohio Law Bulletin of July 1, 1918, on page 212.

Both motions involved the merits, or rather demerits, of the case.

The assignment of error intended to cover the above grounds is number 2, in the following language, as found in the Record, page 20:

*"Second: The said court erred in holding and deciding that Section 6828 of the Ohio General Code is not violative of and contrary to the Constitution of the United States and the Constitution of Ohio."*

As Section 6828 of the Code is no part of the Conservancy Law, which begins with 6828-1 and ends with Section 6828-73 inclusive, the court is certainly at a loss to know what the appellant means. If we correct the error as clerical, what particular section of the law does he mean to assail. They are 73 in number.

Judge Wanamaker, in disposing of the case of  
Miami Co. vs. Dayton, et al,  
92 Ohio State, page 217 (supra)

says in opening his opinion:

*"We have in this case almost every variety of legal and constitutional question. Indeed the record and briefs are so voluminous in the treatment of the issues raised that it will be impossible, outside of a volume, to note and discuss them all. Those meriting serious attention will be noted below."*

Page 217

It is well settled that the decision of the Supreme Court of the State involving constitutional questions arising under the Constitution of the State, will be followed in this court. Counsel seems to concede this proposition in his brief.

## ALLEGED VIOLATION OF THE FEDERAL CONSTITUTION

We now come to the assignment of error that the law violates the 14th amendment to the constitution of the United States.

(a) In denying to complainant the equal protection of the law.

(b) In taking his property without due process of law.

The first objection is based upon the assumption that section 6 (if we again guess at the point intended to be made by the assignment) gives the right of appeal to the district, but denies it to the complainant.

But complainant's counsel refuses to abide by the decision of the Supreme Court upon these very questions, or to read the law correctly.

In Ohio error and appeal, as generally known, are constitutional rights, and the legislature can only regulate their exercise, without abridging or extending the same.

The conservancy law does not deny the right to error to either party. It sought to give the conservancy district an additional right to appeal, for valid reasons not necessary to discuss. In this it exceeded the limits prescribed in the constitution, as decided in

*Deeds vs. Snyder*, 91 Ohio State, 407.

But the right of either party to go up on error has been equally well settled, whether the particular law provides for it or not.

*Miami Co. vs. Dayton et al*, 92 Ohio State, 215.

Hence no federal question arises.

The next point is that the property of the complainant is taken without due process of law. How is not specified, and we must again guess, so far as the assignment of errors is concerned

The bill complains of assessments levied upon the property of the complainant and others, and liens created by the issue of bonds and warrants, etc., to pay for the work; and in the fourth assignment of

error the complainant avers error in the court in holding that there was no lien upon his property until the assessment was contested to a finish, if contested. An unimportant error, if the ruling was wrong. But the court was right. The assessment roll cannot contain complainant's assessment until, if litigated properly, it is litigated to the end, and the result certified back.

Sections 36, 45, 53.

The law is drastic in its provisions. It had to be so. Human nature requires it. But no law of this or a similar kind was ever passed more liberal in its provisions for hearings upon every important step, especially as to compensation and assessments. It is not based solely upon the police power of the State, but more generally upon the doctrine of eminent domain, with the duty of paying for all damage or injury; in many instances where the expense might have been cast upon various utilities or public corporations in the district. We must remember that the safety of the citizen is involved, as well as his property—calling into play the great underlying maxim of government, *Salus populi suprema lex*.

A very brief resumé of the law will show its liberality. When the district is asked, public notice is required, and objections are heard. When a plan is adopted, notice is required and objections are heard. And when assessments of benefits are filed and damages assessed for property taken, in the report of the appraisers, notice is again given and each person or corporation can contest his allowance or assessment before the conservancy court.

If he is dissatisfied with the ruling of the court at any one of the stages above indicated, he can go to the highest court on error, as in any other case, if his grievance goes to the merits. Or if he complains only of the amount awarded him for property taken or in-

jured, he can suspend or vacate the award by giving notice of appeal and filing a bond in the limited sum of \$200 to secure costs in the event his appeal does not yield him a better allowance. The district is then compelled to condemn his property by the usual proceedings under the general law in the county in which the land is situated, a jury being the final arbiter of the amount.

Should the property owner feel that his assessment for benefits is too high, he has the same remedy as the owner whose property is taken or injured, with the rather unusual and favorable right to a jury in the county where the land is situated, upon filing bond and taking an appeal.

And in order to give every body a simple remedy where none appears to be specifically provided, Section 62 gives any party aggrieved by any action of the district his hearing on filing petition, etc.

The Conservancy Court is recognized by the Supreme Court as the regular Court of Common Pleas of the County in which the original petition is filed. It is given exclusive jurisdiction necessarily, as in receiverships. Although the proceeding is statutory, yet the court has full equity powers, besides the legal remedies expressly provided.

It is true that personal service is not provided for in the several steps we have been considering. But in Ohio, it is now settled that publication is sufficient, even as to one who never sees it, and has no actual notice.

Cupp vs. Com., 19 Ohio State, 173

Com. vs. Gates, 83 Ohio State, 20

Lent vs. Tillson, 140 U. S. 316-328

Billingham Co. vs. Whitcomb, 172 U. S. 314

But complainant does not aver that he had no notice of the proceedings. On the contrary the testimony shows that he appeared in the Conservancy court,

filed objections to the assessment which were then awaiting a hearing and afterwards withdrew them and allowed the court to confirm the assessment without objection, after the answer filed in this case alleged the fact of his appearance, as an element in the defense.

This withdrawal can do him no good. The Record shows that he had a complete remedy at law. The filing of a bond for costs would have vacated or suspended the assessment, and entitled him to a trial in a plenary suit, in which he could show that the works would be no benefit to his property, or less than assessed.

Singer Co. vs. Benedict, 229 U. S., 481

The requirement of a bond does not invalidate the section.

Reckner vs. Warner, 22 Ohio State, 275

If he desired to contest the right to assess, or the method of assessment or any other point, now involved in this case, the court was open to him by a proceeding in error from the Conservancy Court to the Court of Appeals and from there to the Supreme Court of Ohio—ultimately to this court, if a federal question was involved.

Hence complainant is in the same position as the railway company in

Ry. Co. vs. Bd. of Public Works, 172 U. S., 32

a case somewhat similar to ours. Relief was denied and the concluding sentence of Judge Gray's opinion is as follows:

*"The plaintiff upon its own showing, having made no attempt to avail itself of the adequate remedies of the statute of the state for the review of the assessment, is not entitled to maintain this bill."*



## Item, page 48

The following extract from the opinion of Justice Peckham is also pertinent.

*"Assuming for the purpose of this objection that the owner of these lands had by the provisions of the act, and before the lands were finally included in the district, an opportunity to be heard before a proper tribunal upon the question of benefits, we are of opinion that the decision of such a tribunal, in the absence of actual fraud and bad faith, would be, so far as this court is concerned, conclusive upon that question. It cannot be that upon a question of fact of such a nature this court has the power to review the decision of the state tribunal which has been pronounced under a statute providing for a hearing upon notice. The erroneous decision of such a question of fact violates no constitutional provision. The Circuit Court in this case has not assumed to undertake any such review of a question of fact."*

*Fallbrook vs. Bradley, 164 U. S., Page 167.*

And this holding was made in a case in which jurisdiction was full and complete because of the diverse citizenship of the parties.

The law in controversy was constructed so as to invite and compel litigation, if it was to be attacked, before the time came for the issuance of the bonds.

If a person did not appear against the formation of the district, its establishment was incontestable by all except the state, for which a short limitation law was fixed.

## SECTION 6.

The official plan when once adopted cannot be changed except as provided in Section 37.

And if a party interested did not appear to contest the award of damages, or the appraisal of benefits, he is concluded, by valid provisions of the law, as having assented; and if he contests but does not appeal, the same result is attained.

SECTIONS 32, 38.

Hibben vs. Smith, 191, U. S., 310.

This court does not encourage litigation in the federal courts involving the powers of cities, counties or other local subdivisions of a state, where the same matter is confided to the state courts, especially of the nature of our proceedings, and are in process of settlement there. And it will not interfere unless the party has no remedy, and a federal right is involved. The party has his federal remedy, as a rule, in a writ of error to the final tribunal in the State.

Fallbrook District vs. Bradley, 164 U. S., 110 157.

Waterworks Co. vs. Owenboro, 200 U. S., 38.

Soliah vs. Heskin, 222 U. S., 523.

Hull vs. Burr, 234 U. S., 712.

The appraisal to which the complainant refers is not an assessment upon the property. It is a finding by the board of the total benefits which the real estate receives by virtue of the protection. It is the difference in market value before and after. And each appraisal is not the amount assessed against the property but the extreme limit to which assessments may be made.

This appraisal, with others, when finally settled, is placed upon a "roll." This "roll" is the basis of a levy to be made. And in this connection we call attention to the concluding section in the answer, record page 5.

#### CONSIDERATION OF BAUMAN AND NORWOOD CASES.

Counsel in his brief cites the cases of:

Dayton vs. Bauman, 66 Ohio State, 379.

Norwood vs. Baker, 172 U. S., 269.

We assume that his assignment of error alleging unconstitutionality is based upon these cases, altho' his brief does not so claim.

The case of Dayton vs. Bauman was the necessary result of the decision by the same court in

Ry. Co. vs. Cincinnati, 62 Ohio State, 465.

Having decided in this last cited case that no assessment for benefits could be made upon a landowner in a city to pay for land taken by condemnation from him, in making a street, the court was driven in all fairness to hold, as it did in the Bauman case, *supra*, that adjacent property, no part of which was taken, could not be assessed for the same purpose. It is apparent at once that it would have been as much an injustice to other adjacent owners to allow Mrs. Baker, in the Norwood case (*supra*) to escape entirely from assessment for the street, as it was to levy the entire cost upon her property, as was done. The case of Norwood vs. Baker involved an assessment by the foot front, and was a gross abuse of the power of the village. It is not for us to criticize the language of the distinguished Justice deciding it. But we may be permitted to say that numerous recent cases in this court, too well known to this court to need citation, have confined and limited its authority as a precedent. If the case is confined to the ruling with the reason given at the top of page 297, it fails to touch the case in hand.

The case of R. R. Co. vs. Cincinnati, 62 Ohio State, 465, involved an assessment by the foot front, of a similar character, as shown by the opinion of Judge Burket upon page 481, in that a city was committing a robbery, guilty of extortion, etc., for which some remedy should be found. And he concludes as follows:

*"We think that the construction heretofore placed upon the power of assessment is un-*

*warranted, that the reasoning in former cases on that subject as above shown is founded upon false premises and is not sound, that the power of assessment does not extend to raising general revenue, nor to reimbursing the treasury for general revenue paid out in appropriating rights of way for street purposes, that the judgment of the circuit court is erroneous, and that the plaintiff in error is entitled to final judgment in its favor upon the record in this case."*

After reciting a number of cases (the list not being complete) in which *Cleveland vs. Wick* was followed or recognized as law, he concludes as follows on page 484:

*"In such cases the municipality may refuse to act in the matter until the parties to be specially benefited supply the funds to pay the compensation, costs, and expenses or such portion thereof as the municipality regards fair and just, the same as is now authorized by Section 4651 as to public roads. By acting upon this principle the burden can be placed where it belongs without forcing people to contribute by assessments where they are not benefited, and where they are opposed to the opening, straightening, or widening of the street; and more than all else, their constitutional rights will be protected. If the present statutes are not broad enough they can be amended."*

Under the facts as stated by the Judge and by Judge Spear such extreme action was unnecessary, as stated by Judge Spear in his dissenting opinion.

The principle applied by this court in

*Myles Salt Co. vs. Drainage District*, 239 U. S. 478 would have remedied the injustice in the particular

case without the necessity of such drastic action as the court took, placing it in opposition to an overwhelming array of decisions in other states in addition to those in its own, and in direct overthrow of the practice in the state for one hundred years.

We are not asking this court to disregard the decisions referred to, although they are now no longer law, as we shall show, and do not reach our case in any event. They were extreme cases and should not be extended.

The syllabus shows what was decided in the case in 62 Ohio State.

1.—That Section 19, Article I of the constitution is a limitation upon Section 6 of Article XIII as to the power of assessment.

2.—That compensation paid to a landowner by appropriation proceedings to open a street cannot be assessed back upon the remaining lands of the owner. In this case the assessment was by the foot front, and not specifically according to actual benefit.

The subsequent case of *Dayton vs. Bauman*, following the above case, held that the limitation of Section 19, Article I, upon Section 6 of Article XIII as to assessments, prohibited the raising of money by assessment upon any property to pay compensation, damages or costs for lands appropriated for public use. What method of assessment was adopted is not disclosed. Judge Burket frankly admits the decision in the case in 62 Ohio State compelled the ruling in the *Bauman* case. In the course of his opinion he says further on page 391:

*"The public appropriates the land for public use, and the public must pay for the land it so takes. Nothing less than the public can appropriate lands by legal process for public use. If an assessment district should be formed and a petition filed by*

*such district to appropriate private property for the use of such district, or the public, a demurrer to such petition would be sustained on the ground that the constitution gives no power of appropriation of private property to such assessment district, such district not being public, and the power of appropriation being given by said Section 19 to the public only.*

*"The power of appropriation being given to the public only, and only for public use, it follows that the public, the taker, must pay for what it takes, because he who takes from another should himself make restitution, and not compel others to pay for what they have not taken. To permit the public to take private property for public use, and then compel private persons to pay for such property against their will, upon the theory that their lots and lands are benefited, would lead to extravagance and often to oppression, while to compel the public, which takes the property for public use, to pay therefor, leads to economy and prudence in taking private property for public use, and therefore said Section 19 was made a limitation on said Section 6, and the power of raising money by assessment to pay for private property taken for public use, is thereby prohibited."*

The case, of course, involved an assessment to pay for land condemned for streets in a city. And it has scarcely any following in any court in the United States. But that is not now important.

In order to find whether the cases relied upon control ours, we quote from the constitution of Ohio, the sections upon which the decision is based.

*Sec. 19. Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war, or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money, and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner. Article I Section 19.*

*Sec. 6. The General Assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power. Article XIII, Section 6.*

Any lawyer familiar with the history of judicial decision in Ohio in condemnation cases knows that the evil sought to be corrected by Section 19 above copied was that of permitting the compensation money awarded by a jury to be eaten up in the same case by benefits of a general character in which adjacent property participated without paying for the same. The concluding sentence of Section 19 is a check upon the jury, one would think, and nothing more. Who should pay was a minor consideration, if thought of at all. Indeed we look in vain for the name of a paymaster either by direct statement or fair inference. When a railroad company condemns it pays. It is not the "public," altho' the use is "public." But that is further along.

Returning to the two sections of the constitution we find two necessary requisites for the application of such rule of decision as may be found in the two Ohio cases under consideration, rendering it doubtful if the law can be declared invalid, even if both exist, as the wrong, if any, would occur in the administration only, and might not occur at all.

First: The only money that cannot be directly assessed back upon the property is money paid upon condemnation.

Second: The only corporations mentioned in Section 6, Article XIII are "cities and villages."

In regard to the second point, the question here raised was made in the case of

The State vs. Com. of Warren Co., 17 O. S., 558, in which a law (now found in General Code §7345, et al) providing for an assessment upon benefited property within two miles on either side of a proposed turnpike was attacked as unconstitutional. This was the only question. In giving the opinion of the court sustaining the law said:

*"It would be enough for the present case to say that Section" (Section 6, Article XIII) "relates exclusively to cities and villiages and can have no application to counties or county commissioners. But it is now settled that assessments of the kind authorized by the act in question, apportioning the amount according to benefits received, whether made by cities and villages for the improvement of streets and alleys, or by county commissioners for the construction of roads, drains, or the like, are not prohibited by the present or former constitution of the state."*



There is no proof to show that the district will be compelled to condemn, or that it will be compelled to assess for condemnation money, or that it will not have abundant money from assessments against cities, counties and villages as units (which go upon the general duplicate of taxes) to meet all such payments.

The rule of decision in this court as to the authority of any case cited as a precedent is well settled, and has been since the time of Chief Justice Marshall. No citations are needed to show that the decision must be interpreted in view of the facts of the case. Also that when the court is confronted with such an array of disagreement upon a subject as is found in Ohio in this case, the decision will not be extended. The case will be accepted, if still unreversed, but only where the same situation is found. This rule was laid down and followed by the Supreme Court of Ohio in refusing to follow *Norwood vs. Baker*, in *Schroeder vs. Overman*, 61 Ohio State, page 1. The Bauman case may be styled a salient in the terrain of judicial decision. The Norwood precedent we have already referred to, but the Bauman case is no longer law in Ohio. It was reversed in fact by a vote of the people in 1912. The following section was adopted, as a part of the new constitution:

*"Sec. 11. Any municipality appropriating private property for a public improvement may provide money therefore in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited shall in no case be levied for more than fifty per centum of the cost of such appropriation. Article XVIII.*

It will be observed that neither Sections 19 or 6 are repealed or modified. The only purpose of this

new section was to abrogate the connection supposed to exist between them and to give to municipal corporations authority in all cases to assess one-half of the condemnation money upon the property benefited. The logic was not accepted. And the case ceases to be law in Ohio.

It was settled at an early day that the power of assessment exists in Ohio by virtue of the general grant of legislative power. It is not found in Section 6, Article XIII. It is only recognized as existing.

Hill vs. Higdon, 5 Ohio State, 245.

Reeves vs. Wood Co., 8 Ohio State, 333.

Sessions vs. Crunkilton, 20 Ohio State, 349.

These cases, and others in Ohio, define the difference between taxation and assessment, and settle that Section 2 of Article XII of the Constitution requiring uniform taxation upon all property does not control the power to assess.

This power is unlimited in Ohio, except as abridged by the constitution. Therefore the power of assessment is only so far limited as we may find some clause in that instrument affecting it. For example: To assess one's property for benefits where no benefit is received, or when the assessment is clearly beyond the benefit, is held to be a taking of property without compensation—contrary to Section 19, Article I.

Chamberlain vs. Cleveland, 34 Ohio State, 551.

Welsh vs. Barron, 61 Ohio State, page 15.

But it is equally well settled that to take from a man by way of assessment upon his property no more than it has received in increased value by reason of an improvement for which it is assessed is not a taking of his property without compensation. Judge Burket concedes this in the cases under consideration. And this is practically conceded in the Norwood case.

Hence in the course of legislation at various times in the history of the state, special taxing or assessing districts have been authorized for the erection of local improvements outside of cities, the cost of which, including compensation for land taken by way of condemnation, must be paid by assessments upon the lands benefited, either in whole or in part.

We refer to the following statutes now in full force in Ohio, as found in the General Code, authorizing assessments to pay for land taken:

Township Ditch, §6613.

Underground Drains, §6655.

Removals of Dams, §6744.

Converting Toll Roads, §7388.

Two Mile Pikes, §§7329, 7345, 7350.

Sink Holes and Fissures, §6680.

Drainages of Marshes, §6535-21.

Single County Ditches, §§6463, 6464.

Joint County Ditches, 6550, 6563, 6563-26, 336 3

Joint County Ditches, §§6550 6563, 6563-26, 33, 36.

Joint County Ditch, Ohio Laws, Vol. 103 (1913) page 830.

When the constitutional convention adopted the amendment we have quoted, it did not deem it necessary to make any provision for the preservation of these laws. And no decision of the Supreme Court can be found, extending the principle of the Bauman case. On the contrary all recent cases assume the ditch laws to be valid.

Greek vs. Joy, 81 O. S., 315.

Com. vs. Gates, 83, O. S., 20-34.

In the Gates case Judge Spear in his opinion adopted with approval the language of Judge Price in a case in the Circuit Court as follows:

*"The entire system of ditch legislation as we have it, proceeds on the theory that those who are benefited in some substantial way, and those alone, shall bear the burden of providing the drainage." Page 34.*

As illustrating the flexibility of the legislative power, we refer to the statute authorizing the establishment of turnpikes by creating a district and levying a *tax* upon all the property within one mile of either side.

This law was held constitutional irrespective of the plea that the road was of no possible benefit to the objector.

R. R. C. vs. Com., 48 O. S., 249.

On the other hand a law authorizing a turnpike to be built at the expense of all lands lying within two miles from the same, which were found to be benefited, by means provided in the law, was found to be constitutional.

State vs. Warren Co., 17 Ohio State, 560.

State vs. Com., 37 Ohio State, 526.

This is a fair recognition of the doctrine laid down in the case of

Mobile Co. vs. Kimball, 102, U. S., 691,  
cited and followed in the important case of

Bauman vs. Ross, 167 U. S., 548, 588, 589,  
and in Ohio in the case of

Miami Co. vs. Dayton, 92 O. S., 215,  
affirming the constitutionality of the Conservancy Act, to the effect that how an enterprise like ours shall be paid for is within the power of the legislature to decide. See also Wagner vs. Baltimore, 239 U. S., 207.

It must be born in mind that the Conservancy District is itself a separate, political subdivision of the state with definite permanent boundaries and permanent officers and is given the necessary power to accomplish protection. It is not similar to an assessing district in a city, or a ditch established by township or county officials. Who constitute the "public" unless it be the corporation? Who shall pay unless it be the corporation? The "public" is the people benefited. They are definitely found out by law. And how it shall pay is absolutely within the power of the

legislature to determine. The legislature has defined the "public." And it is well settled in this state that Section 2 of Article XII in regard to taxation has no application to assessments. And if no more is taken from a property owner than his fair share of the expense, not exceeding his benefits, nothing is taken from him, and no constitutional question arises.

The general language of Judge Burket as to who constitutes "the public" may have some standing when speaking of an assessment district in a city, although contrary to the great weight of authority and the ruling of this court in

Wilson vs. Lambert, 168 U. S., 611, 614.

It was a dictum, if extended beyond the facts in the particular case, and will not govern or control this Court, when the same facts do not exist.

We doubt if his language would be now approved by the Supreme Court of Ohio, limited even as to cities.

It has been called upon recently to define the term "public," and we take the following extracts from the opinion of Judge Wanamaker, in a ditch case:

*"Lest some, however, be in want of authority of other courts upon the question and meaning of the word 'public' in this connection, the following is cited:*

*"The term 'public' does not mean all the people, nor most of the people, nor very many of the people of a place, but so many of them as contradistinguishes them from a few. State vs. Luce, 9 Houston, 396, 399, United States vs. Luce, 141 Fed. 385, 393, 32 cys, 747 et seq. Thomas vs. Commission, 5 N. P. 449—S. O. Dic. 503."*

State vs. Baker, 88 Ohio State, 165, 179.

Counsel have probably exceeded the limit in the length of their argument, especially in view of the able and comprehensive opinion rendered by Judge

Hollister in the court below—covering every point urged by counsel for complainant and with sound logic and precedent upon each objection. But it is better to endeavor to assist the Court than to leave it to brief the case for the defendant in the search for the right of the parties; especially as the learned Judge of the District Court did not discuss the Bauman and Norwood cases which now seem to be complainant's chief reliance.

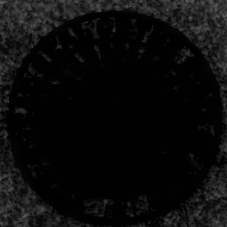
All of which is respectfully submitted,  
OREN BRITT BROWN,  
JOHN A. McMAHON,  
*Solicitors for Appellees.*

Tr. 8

Allen et al. 9

Brief of } One with appendix  
See Page 2 } of Appellate Brief

# THE CONSERVANCY LAW OF OHIO







# THE CONSERVANCY LAW

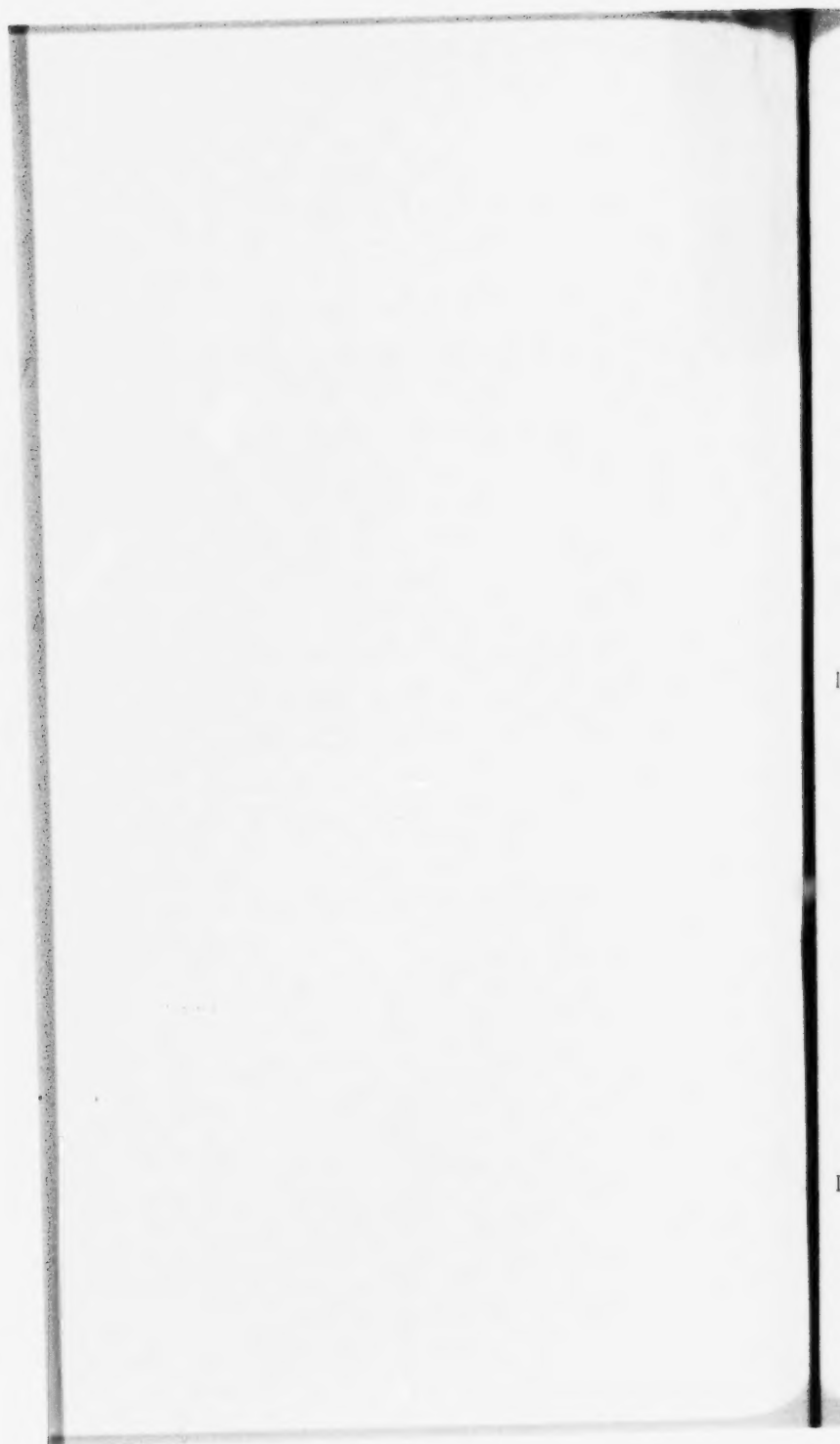
104 Ohio Laws pages 13 to 64 Inclusive

To prevent floods, to protect cities, villages, farms  
and highways from inundation and to author-  
ize the organization of drainage and  
conservation districts

PASSED FEBRUARY 5, 1914



DAYTON, OHIO  
THE GIELE & PFLAUM CO.  
1917



# THE CONSERVANCY LAW

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# THE CONSERVANCY LAW

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To prevent floods, to protect cities, villages, farms and highways from inundation, and to authorize the organization of drainage and conservation districts.

*As Enacted by the General Assembly of the State of Ohio:*

## I. SHORT TITLE AND INTERPRETATION.

SECTION I. TERMS DEFINED. This act may be known and cited as the *Conservancy Act of Ohio*"; the bonds which may be issued hereunder may be briefly called "Conservancy Bonds," and shall be so engraved or printed on their face; the districts created hereunder shall be briefly termed "Conservancy Districts"; the tax books and records provided for hereunder shall be termed "Conservancy Books" or "Conservancy Records," and such titles shall be printed, stamped or written thereon.

**Section  
6828-1**

Terms defined

Wherever the term "publication" is used in this act and no manner specified hereof, it shall be taken to mean once a week for three (3) consecutive weeks in each of two (2) newspapers of different political affiliations (if such newspapers there be) and of general circulation in the county or counties wherein such publication is to be made. It shall not be necessary that publication shall be made on the same day of the week in each of the three (3) weeks; but not less than fourteen (14) days, (excluding the day of the first publication), shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

Wherever the term "person" is used in this act, and not otherwise specified, shall be taken to mean person, firm, copartnership, association or corporation, other than county, township, city, village, or other political subdivision. Similarly, the words "public corporation" shall be taken to mean counties, townships, cities, villages, school districts, road districts, ditch districts, park districts, levee districts, and all other governmental agencies clothed with the power of levying general or special taxes.

Wherever the term "Court" is used, and not otherwise specified, it shall be taken to mean the Court of Common Pleas wherein the petition for the organization of the District was filed and granted.

Wherever the terms "land" or "property" are used in this act they shall, unless otherwise specified, be held to mean real property, as the words "real property" are used in and defined by the laws of the State of Ohio, and shall embrace railroads, tramroads, roads, electric railroads, street and interurban railroads, streets and street improvements, telephone, telegraph, and transmission

lines, gas, sewerage and water systems, pipe lines and rights of way of public service corporations, and all other real property whether public or private.

## II. ORGANIZATION OF DISTRICT.

### Section 6828-2

**SECTION 2. COURT OF COMMON PLEAS TO ORGANIZE DISTRICTS.** The Court of Common Pleas of any county in this state, or any Judge thereof in vacation, is hereby vested with jurisdiction, power and authority, when the conditions stated in the third section of this act are found to exist, to establish conservancy districts, which may be entirely within, or partly within and partly without, the county in which said court is located, for all or any of these purposes:

Purposes for  
which districts  
may be  
organized.

- (a) of preventing floods;
- (b) of regulating stream channels by changing, widening and deepening the same;
- (c) of reclaiming or of filling wet and overflowed lands;
- (d) of providing for irrigation where it may be needed;
- (e) of regulating the flow of streams;
- (f) of diverting, or in whole or in part eliminating water courses;

and incident to such purposes and to enable their accomplishment, to straighten, widen, deepen, change, divert, or change the course or terminus of, any natural or artificial water course; to build reservoirs, canals, levees, walls, embankments, bridges or dams; to maintain, operate and repair any of the construction herein named; and to do all other things necessary for the fulfillment of the purposes of this act.

### Section 6828-3

Petition: what  
it shall set  
forth.

**SECTION 3. PETITION.** Before any court shall establish a district as outlined in Section 2, a petition shall be filed in the office of the clerk of said court, signed either by five hundred (500) freeholders, or by a majority of the freeholders, or by the owners of more than half of the property, in either acreage or value, within the limits of the territory proposed to be organized into a district. Such a petition may be signed by the governing body of any public corporation lying wholly or partly within the proposed district, in such manner as it may prescribe, and when so signed by such governing body such a petition on the part of the said governing body shall fill all the requirements of representation upon such petition of the freeholders of such public corporation, as they appear upon the tax duplicate; and thereafter it shall not be necessary for individuals within said public corporation to sign such a petition. Such a petition may also be signed by railroads and other corporations owning lands.

And such petition may also be filed by any city or cities interested in some degree in the improvement, upon proper action by their governing bodies.

The petition shall set forth:

First: The proposed name of said district.

Second: The necessity for the proposed work and that it will be conducive to the public health, safety, convenience or welfare.

Third: A general description of the purpose of the contemplated improvement, and of the territory to be included in the proposed district. Said description need not be given by metes and bounds or by legal subdivisions, but it shall be sufficient if a generally accurate description is given of the territory to be or-



ganized as a district. Said territory need not be contiguous, provided it be so situated that the public health, safety, convenience or welfare will be promoted by the organization as a single district of the territory described.

Fourth: Said petition shall pray for the organization of the district by the name proposed.

No petition with the requisite signature shall be declared null and void on account of alleged defects, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, by correcting any errors in the description of the territory, or in any other particular. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on said petition shall be considered by the court the same as though filed with the first petition placed on file.

In determining when a majority of land owners have signed the petition the court shall be governed by the names as they appear upon the tax duplicate, which shall be *prima facie* evidence of such ownership.

**SECTION 4. BOND OF PETITIONERS.** At the time of filing the petition, or at any time subsequent thereto and prior to the time of the hearing on said petition, a bond shall be filed, with security approved by the court, sufficient to pay all the expenses connected with the proceeding in case the court refuses to organize the district. If at any time during the proceeding the court shall be satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed to be not less than ten (10) days distant, and upon failure of the petitioners to execute the same the petition shall be dismissed.

**Section  
6828-4**  
Bond of  
petitioners.

**SECTION 5. NOTICE OF HEARING ON PETITION.** Immediately after the filing of such petition, the clerk of the court with whom such petition is filed shall cause notice by publication, (Form 1, Schedule), to be made of the pendency of the petition and of the time and place of the hearing thereon.

**Section  
6828-5**  
Notice of  
hearing;  
jurisdiction of  
court.

The court of common pleas of the county in which the petition was filed shall thereafter, for all purposes of this act, except as hereinafter otherwise provided, maintain and have original and exclusive jurisdiction co-extensive with the boundaries and limits of said district and of lands and other property proposed to be included in said district or affected by said district, with out regard to the usual limits of its jurisdiction.

**SECTION 6. HEARING ON PETITION.—ORGANIZATION OF DISTRICT.** Any owner of real property in said proposed district who individually may not have signed such a petition and who wishes to object to the organization and incorporation of said district shall, on or before the date set for the cause to be heard, file his objections why such district should not be organized and incorporated. Such objections shall be limited to a denial of the statements in the petition, and shall be heard by the court as an advanced case without unnecessary delay.

**Section  
6828-6**  
Hearing on  
petition;  
decree.

Upon the said hearing, if it shall appear that the purposes of this act would be subverted by the creation of a Conservancy District, the court shall, after

disposing of all objections as justice and equity require, by its findings, duly entered of record, adjudicate all questions of jurisdiction, declare the district organized and give it a corporate name, by which in all proceedings it shall thereafter be known, and thereupon the district shall be a political subdivision of the State of Ohio, a body corporate with all the powers of a corporation, shall have perpetual existence, with power to sue and be sued, to incur debts, liabilities and obligations; to exercise the right of eminent domain and of taxation and assessment as herein provided; to issue bonds and to do and perform all acts herein expressly authorized and all acts necessary and proper for the carrying out of the purposes for which the district was created, and for executing the powers with which it is invested.

In such decree the court shall designate the place where the office or principal place of business of the district shall be located, which shall be within the corporate limits of the district if practicable, and which may be changed by order of court from time to time. The regular meetings of the board of directors shall be held at such office or place of business, but for cause may be adjourned to any other convenient place. The official records and files of the district shall be kept at the office so established.

If the court finds that the property set out in said petition should not be incorporated into a district, it shall dismiss said proceedings and adjudge the costs against the signers of the petition, in the proportion of the interest represented by them. Any petitioner may, within twenty (20) days after the refusal, appeal from an order refusing to establish such district to the Court of Appeals of said county, upon giving bond in a sum to be fixed by the court.

After an order is entered establishing the district, such order shall be deemed final and binding upon the real property within the district and shall finally and conclusively establish the regular organization of the said District against all persons except the State of Ohio upon suit commenced by the Attorney General. Any such suit must be commenced within three months after said decree declaring such District organized as herein provided, and not otherwise. The organization of said District shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly authorized.

In case of a district lying in more than one county, one Common Pleas Judge of each of the counties having land in the district shall sit as a Court in the Court House where the original petition was filed, to make the findings required by this section and by section 12 herein. The majority of said judges shall be necessary to render a decision. In case of a tie said matter shall be forthwith certified to the Court of Appeals of said county, and said Court shall hear and determine said matter as an advanced case in preference to all other business.

**SECTION 7. DECREE OF INCORPORATION FILED.** Within thirty (30) days after the said district has been declared a corporation by the court, the clerk of the court shall transmit to the Secretary of State, and to the County Recorder in each of the counties having lands in said district, copies of the findings and the decree of the court incorporating said district. The same shall be filed and recorded in the office of the Secretary of State in the same manner as articles of incorporation are now required to be filed and recorded under the general law concerning corporations, and copies shall also be filed in the office of the

Effect of order  
establishing  
district.

District in  
more than one  
county.

#### Section 6828-7

Decree of  
incorporation  
filed with  
secretary of  
state; copy  
with county  
recorder.

County Recorder of each county in which a part of the district may be, where they shall become permanent records; and the Recorder in each county shall receive a fee of \$1 for filing and preserving the same, and the Secretary of State shall receive for filing and for recording said copies such fees as now are or hereafter may be provided by law for like services in similar cases.

### III. ORGANIZATION OF BOARD—ITS POWERS AND DUTIES.

**SECTION 8. APPOINTMENT OF DIRECTORS.** Within thirty (30) days after entering the decree incorporating said district, the court shall appoint three (3) persons, at least two (2) of whom shall be resident freeholders within the district, as a Board of Directors of the district—one for a term of three (3) years, one for a term of five (5) years and one for a term of seven (7) years. At the expiration of their terms of office appointments shall be made for terms of five years. The court shall fill all vacancies which may occur on the said Board. In case of a district lying in more than one county, appointments of directors under this Section, and of appraisers under Section 26 of this act shall not be effective until approved by a majority of the judges constituting the court provided for in Section 6 of this act.

**Section  
6828-8**

Appointment  
of directors.

**SECTION 9. BOARD OF DIRECTORS TO ORGANIZE.** Each director before entering upon his official duties shall take and subscribe to an oath before a suitable officer that he will honestly, faithfully and impartially perform the duties of his office, and that he will not be interested directly or indirectly in any contract let by said district, which said oath shall be filed in the office of the clerk of said court in the original case. Upon taking the oath, the board of directors shall choose one of their number president of the board, and shall elect some suitable person secretary, who may or may not be a member of the board. The board shall adopt a seal, and shall keep in a well-bound book a record of its proceedings, minutes of all meetings, certificates, contracts, bonds given to employees and all corporate acts, which shall be open to the inspection of the owners of property in the district, as well as to all other interested parties.

**Section  
6828-9**

Organization  
of board;  
record of  
proceedings.

**SECTION 10. QUORUM.** A majority of the directors shall constitute a quorum, and a concurrence of the majority in any matter within their duties shall be sufficient for its determination.

**Section  
6828-10**

Quorum.

**SECTION 11. MAY EMPLOY AGENTS.** The secretary shall be the custodian of the records of the district and of its corporate seal and shall assist the board in such particulars as it may direct in the performance of its duties. It shall be the duty of the secretary to attest, under the corporate seal of the district, certified copies of the official records and files of the district that may be required of him by the provisions of this act, or by any person ordering the same and paying the reasonable cost of transcription. And any portion of the record so certified and attested shall *prima facie* import verity. The secretary shall also serve as treasurer of the district, unless a treasurer is otherwise provided for by the board. The board may also employ a chief engineer who

**Section  
6828-11**

Custodian of  
records and  
seal; duties of  
secretary.

Contracts with  
employees  
shall be in  
writing.

Report by  
chief engineer.

may be an individual, copartnership or corporation; an attorney; and such other engineers, attorneys and other agents and assistants as may be needful; and may provide for their compensation, which, with all other necessary expenditures, shall be taken as a part of the cost of the improvement. The employment of the secretary, treasurer, chief engineer and attorney for the district shall be evidenced by agreements in writing, which, so far as possible, shall specify the amounts to be paid for their services. The chief engineer shall be superintendent of all the works and improvements, and shall make a full report to the board each year, or oftener if required, and may make such suggestions and recommendations to the board as he may deem proper.

#### Section 6828-12

Plans for  
improvements  
with cost and  
specifications.

**SECTION 12. TO PREPARE PLANS.** Upon their qualification, the board shall prepare or cause to be prepared a plan for the improvements for which the district was created. Such plan shall include such maps, profiles, plans and other data and descriptions as may be necessary to set forth properly the location and character of the work, and of the property benefited or taken or damaged, with estimates of cost and specifications for doing the work.

In case the board of directors finds that any former survey made by any other district or in any other manner is useful for the purposes of the district, the board of directors may take over the data secured by such survey, or such other proceedings as may be useful to it, and may pay therefor an amount equal to the value of such data to said district. No construction shall be made under the authority of this act which will cause the flooding of any village or city or which will cause the water to back up into any village or city, unless the board of directors shall have acquired and paid for the right to use the land affected for such purpose, and shall have paid all damages incident thereto. No railroad shall be required to be constructed with a grade in excess of the maximum ruling grade then existing upon that division of said railroad whereon said change is required.

Notice;  
hearing of  
objections.

Upon the completion of such plan, the board shall cause notice by publication to be given as provided in Section 1 herein in each county of said district, of such completion of said plan, and shall permit the inspection thereof at their office by all persons interested. Said notice shall fix the time and place for the hearing of all objections to said plan not less than twenty (20) days nor more than thirty (30) days after the last publication of said notice. All objections to said plan shall be in writing and filed with the secretary of said board at his office not more than ten (10) days after the last publication of said notice. After said hearing before the board of directors, the said board shall adopt a plan as the OFFICIAL PLAN of the said district. If, however, any person or persons object to said Official Plan, so adopted, then such person or persons may, within ten (10) days, from the adoption of said Official Plan, file their objections in writing, specifying the features of the plan to which they object, in the original case establishing the district in the office of the clerk of said court, and he shall fix a day for the hearing thereof before the court, not less than twenty (20) days nor more than thirty (30) days after the time fixed for filing objections, at which time the Judges, sitting as a court as provided for in Section 6 herein, for the organization of the district, shall meet at the Court House of the County where said original case is pending, and hear said objections and adopt, reject or refer back said plan to said board of directors. A

majority of the Judges shall control and in case of a tie, shall proceed as provided in Section 6 herein. If said Court should reject said plan, then said board shall proceed as in the first instance under this Section to prepare another plan. If the Court should refer back said plan to said board for amendment, then the Court shall continue the hearing to a day certain without publication of notice. If the said Court should approve said plan as the Official Plan of said district, then a certified copy of said journal of said Court shall be filed with the secretary of the board of directors, and by him incorporated into the records of the district. The Official Plan may be altered in detail from time to time until the Assessment Roll is filed, and of all such alterations the appraisers shall take notice. But after the Assessment Roll has been filed in court no alterations of the Official Plan shall be made except as in Section 37 hereof provided.

**SECTION 13. TO EXECUTE WORKS.** The board of directors shall have full power and authority to devise, prepare for, execute, maintain and operate any or all works or improvements necessary or desirable to complete, maintain, operate and protect the Official Plan. They may secure and use men and equipment under the supervision of the chief engineer or other agents, or they may in their discretion let contracts for such works, either as a whole or in parts.

**Section  
6828-13**

Authority to execute and maintain and operate works.

**SECTION 14. MAY ENTER UPON LANDS.** The board of directors of any district organized under this act, or their employees or agents, including contractors and their employees, and the members of the board of appraisers and their assistants, may enter upon lands within or without the district in order to make surveys and examinations to accomplish the necessary preliminary purposes of the district, or to have access to the work, being liable, however, for actual damage done, but no unnecessary damage shall be done. Any person or corporation preventing such entrance shall be guilty of misdemeanor, punishable by fine not exceeding fifty dollars (\$50).

**Section  
6828-14**

Right to enter upon lands.

**SECTION 15. GENERAL POWERS.** In order to effect the protection, reclamation or irrigation of the land and other property in the district, and to accomplish all other purposes of the district, the board of directors is authorized and empowered to clean out, straighten, widen, alter, deepen or change the course or terminus of any ditch, drain, sewer, river, water course, pond, lake, creek or natural stream in or out of said district; to fill up any abandoned or altered ditch, drain, sewer, river, water course, pond, lake, creek or natural stream, and to concentrate, divert or divide the flow of water in or out of said district; to construct and maintain main and lateral ditches, sewers, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations and syphons, and any other works and improvements deemed necessary to construct, preserve, operate or maintain the works in or out of said district; to construct or enlarge or cause to be constructed or enlarged any and all bridges that may be needed in or out of said district; to construct or elevate roadways and streets; to construct any and all of said works and improvements across, through or over any public highway, canal, railroad right-of-way, track, grade, fill or cut, in or out of said district; to remove or change the location of any fence, building, railroad, canal, or other

**Section  
6828-15**

General powers.

improvements in or out of said district; and shall have the right to hold, encumber, control, to acquire by donation, purchase, or condemnation, to construct, own, lease, use and sell real and personal property, and any easement, riparian right, railroad right of way, canal, cemetery, sluice, reservoir, holding basin, mill dam, water power, wharf, or franchise in or out of said district for right of way, holding basin or for any necessary purpose, or for material to be used in constructing and maintaining said works and improvements, to replot or subdivide land, open new roads, streets and alleys, or change the course of an existing one.

**Section  
6828-16**

Contracts  
which exceed  
\$1,000 shall be  
let by  
competitive  
bidding

**SECTION 16. TO ADVERTISE AND LET CONTRACTS.** When it is determined to let the work by contract, contracts in amounts to exceed one thousand dollars (\$1,000) shall be advertised after notice calling for bids shall have been published, once a week for five (5) consecutive weeks completed on date of last publication, in at least one newspaper of general circulation within said district, where the work is to be done, and the board may let said contract to the lowest or best bidder who shall give a good and approved bond, with ample security, conditioned on the carrying out of the contract. But said contract shall not be let to another than the lowest bidder unless upon a hearing before the court, and with notice to all parties interested, an order to be obtained therefor. Such contract shall be in writing, and shall be accompanied by or shall refer to plans and specifications for the work to be done, prepared by the chief engineer. Said contract shall be approved by the board of directors and signed by the president of the board and by the contractor, and shall be executed in duplicate. Provided, that in case of sudden emergency when it is necessary in order to protect the district, the advertising of contracts may be waived upon the unanimous consent of the board of directors, with the approval of the court or judge in vacation.

**Section  
6828-17**

Dominant  
right of  
eminent  
domain.

**SECTION 17. DOMINANT RIGHT OF EMINENT DOMAIN.** Said board, where necessary for the purposes of this act, shall have a dominant right of eminent domain over the right of eminent domain of railroad, telegraph, telephone, gas, water power and other companies and corporations, and over townships, villages, counties and cities.

In the exercise of this right due care shall be taken to do no unnecessary damage to other public utilities, and, in case of failure to agree upon the mode and terms of interference, not to interfere with their operations or usefulness beyond the actual necessities of the case, due regard being paid to the other public interests involved.

**Section  
6828-18**

Condemnation  
under general  
law.

**SECTION 18. MAY CONDEMN UNDER GENERAL LAW.** Said board shall also have the right to condemn for the use of the district, any land or property within or without said district not acquired or condemned by the court on the report of the appraisers, according to the procedure provided by law for the appropriation of land or other property taken for telegraph, telephone and railroad rights of way, instead of having appraisals and assessments made by the board of appraisers.



**SECTION 19. MAY MAKE REGULATIONS TO PROTECT WORKS.** Where necessary in order to secure the best results from the execution and operation of the plans of the district, or to prevent damage to the district by the deterioration or misuse, or by the pollution of the waters, of any water course therein, the board of directors may make regulations for and may prescribe the manner of building bridges, roads or fences or other works in, into, along or across any channel, reservoir or other construction; and may prescribe the manner in which ditches or other works shall be adjusted to or connected with the works of the district or any water course therein; and, when not in conflict with the regulations of the State Board of Health, may prescribe the manner in which the water courses of the district may be used for sewer outlets or for disposal of waste.

**Section  
6828-19**

Regulations to protect works.

The construction of any works in a manner harmful to the district or to any water course therein, and in a manner contrary to that specified by the directors, shall be a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000). The directors shall have authority to enforce by mandamus or otherwise all necessary regulations made by them and authorized by this act, and may remove any harmful construction or may close any opening improperly made, and they are authorized to bring such suits in mandamus in the Court of Appeals in the first instance, if deemed advisable by them. Any person, corporation or municipality wilfully failing to comply with such regulations shall be liable for damage caused by such failure, and for the cost of renewing any construction damaged or destroyed.

Construction of works in harmful manner prohibited. Penalty.

**SECTION 20. MAY REMOVE BRIDGES.** Wherever the Official Plan requires the building, modification, removal or rebuilding of any bridge, grade, aqueduct or other construction, and a hearing upon the report of the appraisers has been had and a final order issued by the court for appraisals and assessments affecting such constructions, the owner of said bridge, grade, aqueduct or other structure shall be bound to make such changes or adjustments within the time specified in the Official Plan, or within the time directed by the court, which time shall be a reasonable one under all the circumstances. In case such changes or adjustments are not made, the board of directors may make such adjustments or removals. If the change or improvement of a natural water course is made necessary by the insufficiency of the bridge or other structure to permit the water of the stream to pass through it in times of high water, the work of altering or removing said bridge or other structure shall be at the expense of the owner. Before the removal or modification of any works outlined in this section, the board of directors shall give thirty (30) days' notice to the owner of such bridge or such construction that the same be adapted to the plans. In case the owner of any bridge or other structure shall object to the modification or removal of such bridge or other structure on the ground that the cost of the modification or removal will be greater than the benefits resulting from such removal, a hearing shall be had before the court of common pleas having the original case, and if such contention is sustained, such modification or removal shall not be required.

**Section  
6828-20**

Removal of bridge or other construction on final order.

The board of directors of any district organized under this law shall have full power and authority to improve in alignment, section, grade or in any other manner any water course, and they may require the removal, widening, lengthen-

Change of water course and removal of any construction.

ing, deepening, raising or other change of any public or private road bridge or railroad bridge or any aqueduct or telephone, telegraph, gas, oil, sewer, water or other pipe lines or any other construction over, along, across, under or through such water course. In case such change is made necessary in any such structure by the failure of such bridge or other structure to permit the free flow of the water in such stream in time of flood, then the owner of any such construction shall make such change without cost to the district, or without any claim for damages against the district, except that the district shall pay the cost of excavating the earth for the enlargement of any channel or for placing earth for the filling of any channel where such excavation or filling is required as a part of plans of the district in making the changes outlined in this section, but the district shall not be required to make such fill or excavation unless it would be necessary to the plans of the district if the bridge or other construction did not exist.

**Section  
6828-21**

Passing equipment through bridge or grade: payment on itemized account.

**SECTION 21. PASSING EQUIPMENT THROUGH BRIDGE OR GRADE.** In case it is necessary to pass any dredge boat or other equipment through a bridge or grade of any railroad company or other corporation, county, township, or municipality, the board of directors shall give twenty (20) days' notice to the owner of said bridge or grade that the same shall be removed temporarily to allow the passage of such equipment or that an agreement be immediately entered into in regard thereto. The owner of said bridge or grade shall keep an itemized account of the cost of the removal, and, if necessary, of the replacing of said bridge or grade, and said actual cost shall be paid by the district. In case the owner of said bridge or grade shall refuse to provide for the passage of said equipment, the board of directors may remove such bridge or grade at its own expense, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage. In case they shall be prevented from doing so, the owner of said bridge or grade shall be liable for damage for the resulting delay.

**Section  
6828-22**

Right to make surveys and investigations.

**SECTION 22. MAY MAKE SURVEYS AND INVESTIGATIONS.** The board of directors shall also have the right to establish and maintain stream gages, rain gages, a flood warning service with telephone or telegraph lines or telephone or telegraph service, and may make such surveys and examinations of rainfall and flood conditions, stream flow, and other scientific and engineering subjects as are necessary and proper for the purposes of the district, and they may issue reports of their findings.

**Section  
6828-23**

Co-operation with U. S. government and contracts with other states.

**SECTION 23. MAY CO-OPERATE WITH U. S. GOVERNMENT OR OTHER AGENCIES—OUTLETS IN OTHER STATES.** The board of directors shall also have the right and authority to enter into contracts or other arrangements with the United States Government or any department thereof, with persons, railroads or other corporations, with public corporations, and the State Government of this or other states, with Drainage, Conservation, Conservancy, or other improvement districts, in this or other states, for co-operation or assistance in constructing, maintaining, using and operating the works of the district or the waters thereof, not in violation of Article VIII of the Constitution; or for making surveys and investigations or reports thereon; and may purchase, lease or acquire land or other property in adjoining states in order to secure outlets or for other purposes



of this act, and may let contracts or spend money for securing such outlets or other works in adjoining states.

**SECTION 24. WATER POWER AND SUPPLY.** The rights of landowners, municipalities, corporations, and other users of water to the waters of the district for domestic use, water supply, industrial purposes, for water power, or for any other purposes shall extend only to such rights as were owned by them prior to the organization of the district, and to such use as could be made of such waters if the improvements of the district had not been made. Wherever the organization of, or the improvements made by the district make possible a greater, better, or more convenient use of, or benefit from, the waters of the district for any purpose, the right of such greater, better, or more convenient use of, or benefit from, such waters shall be the property of the district; and such rights may be leased, sold, or assigned by the district in return for reasonable compensation.

Where the district is a riparian owner along the streams of the district, it shall have in addition the rights which go with riparian ownership.

All the rights and property of the district in the waters and water courses of the district, and in their uses, shall be exercised in such a manner as to promote the welfare of the district, and of all inhabitants thereof, and to promote the safest and most economical and reasonable use of the waters thereof; to encourage and promote industries and agriculture, and to pay the cost of the construction and maintenance of the improvement. Charges for such use shall not be greater than are necessary to accomplish these purposes.

Persons, corporations, municipalities, or other parties desiring to secure such use of the waters or water courses of the district, or of the district rights therein, may make application to the board of directors for lease, purchase, or permission for such use. Such application shall state the purpose and character of such use, the period and degree of continuity of such use, the amount of water desired and the place of use. In case any party makes greater, better or more convenient use of the waters of the district without formal application, the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application had been made. Where it is not possible nor reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as may be determined by the board of directors, subject to the approval of the court. Preference shall be given, first, to domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and farm yard use, or for watering stock; second, to supplying water used in processes of manufacture, for the production of steam, for refrigerating, cooling and condensing, and for maintaining sanitary conditions of stream flow; third, for irrigation, power development, recreation, fisheries and for other uses.

The board of directors shall not permanently sell, lease, assign, permit or otherwise part with the control by the district of the use of the waters thereof, and rates for light, power or other services charged by vendees, assignees, lessees or licensees of such board of directors shall be subject at all times to revision and control by state law. Assignments, leases, sales or permissions may be made for periods of not greater than fourteen (14) years. At the

**Section  
6828-24**

Rights as to water power and supply.

Rights exercised to promote general welfare.

Application to secure use of water or water courses.

Permanent sale or lease prohibited.

termination of the period of such assignments, sales, leases, or permissions, they shall be renewed for a reasonable period not to exceed fourteen (14) years, on the condition that a new determination is made of a reasonable charge therefor, as herein provided; unless there are other applications on file, the granting of which would result in filling a greater need or in a more reasonable use. In case such applications are on file, they shall have preference.

Power to make regulations for the better and more convenient use of water supply.

The board of directors may make regulations for the determination and measurement of the increased, or better, or more convenient use of, or benefit from the water supply of the district, for the purpose of determining rates of compensation, and for the purpose of securing to all parties interested the greatest and best use of the water thereof. The board shall have power to determine the rates of compensation for such greater, better, or more convenient use of, or benefit from the water supply of the district, which rates shall be reasonable, and may require bond to be given to secure the payment for such use. Upon the determination of any rate, or rates, the board shall make a report of its determination to the court. The court shall thereupon cause personal notice by summons to be given to the parties interested, stating that such a determination of rate has been made, that a hearing before the court will be had thereon on a certain day, and that objection may be made at such time to such determination of rates. A hearing may be had before the court, objections may be made and appeals taken in the same manner as in case of the appraisal of benefits. In case no appeal is made within the time provided, or upon the final determination of the matter by the court, the determination of such rates of compensation shall be conclusive and binding for the term and under the conditions specified in the lease or other agreement. In case of failure of any user to pay for use in the manner specified by order of the court, the board may compel payment, and may enjoin further use until such payment is made. The rights under any lease or sale shall not extend to a change of use, or of place, time, or manner of use, except in so far as is specifically stated in the lease or other agreement.

Payment for use of waters of district; how determined.

The compensation for greater, better, or more convenient use of, or benefit from the waters of the district, may be made by payment according to a unit price per cubic foot of water used, or by a unit price for theoretical horse power developed, or in any other reasonable measurement of value received by reason of the greater, better or more convenient use of, or benefit from, the waters of the district. All money received as compensation under the provisions of this paragraph shall be added to the funds of the district and used for defraying the expenses thereof.

How basis for assessment of benefits determined; report, hearing.

As a basis for assessment of benefits due to a greater, better, or more convenient use of, or benefit from, the waters of the district, the directors of the district may cause a determination to be made of the conditions of the water supply and of the water courses of the district as they were before the improvements were made, or as they existed at any subsequent time, and they may make a determination of all rights, property, easements, or other interests in the waters, or the water courses of the district—such determination being based upon records of greatest and least flow, upon the evidence of use, or evidence of legal rights, and upon any other evidence and records which may be available. Upon the completion of such determination, the directors of the district shall make their report thereon to the court. Thereupon notice shall be given of the pendency of said report and a hearing thereon, which notice and hearing

shall conform as nearly as possible to the notice and hearing on appraisals of benefits and of land to be taken, and the same right of appeal shall exist. Upon the determination of the matter by the court, its findings shall be conclusive, and shall be the basis of any future assessment for the use of the waters of the district, provided that in case any party shall thereafter establish in court any right or property in the waters of the district, or the use thereof, which has not been adjudicated, the existence of such right, or the failure to adjudicate it, shall not affect the operation of this provision nor the findings of the court thereon in any other particular. The rights of the district to the waters of the district, or the use thereof, or the land within the district and owned by it shall not be lost by the district by prescription or by adverse possession.

Rights shall not be lost by prescription or adverse possession.

The appraisal of benefits made by the appraisers of the district shall not include benefits for such greater, better or more convenient use of, or benefit from, the waters of the district, but the compensation for such use or benefits shall be made according to the provisions of this section.

Compensation for use or benefits.

**SECTION 25. CEMETERIES.** Whenever it may be necessary for the purposes of a district to take or damage any cemetery, the appraisers of the district shall appraise the cost of such taking or easement in the same manner as appraisals are made for other property.

**Section 6828-25**  
Power to remove cemeteries.

Said directors shall have the same powers in case of the removal of a cemetery to agree with the authorities owning or controlling the said cemetery in the same manner that township trustees are authorized by Section 3465 of the General Code; and in case of agreement the directors may purchase the necessary land, and remove or contract for the removal of those buried, together with all monuments. They may also contract for an easement therein if removal is not desired.

All proceedings in regard to such cemeteries shall be in conformity with the order of the court. In case condemnation proceedings are necessary they shall be instituted and conducted according to law in the county where such cemeteries are located.

#### IV. APPRAISALS OF BENEFITS.

**SECTION 26. APPOINTMENT OF APPRAISERS.** At the time of making its order organizing the district or at any suitable time thereafter, either in term or in vacation, the court or judge shall appoint three (3) appraisers, who shall in every case where appraisers are appointed under this act be recommended by the board of directors, and whose duty it shall be to appraise the lands or other property within and without the district to be acquired for rights of way, reservoirs and other works of the district, and to appraise all benefits and damages accruing to all lands within or without the district by reason of the execution of the Official Plan. Said appraisers shall be freeholders residing within the State of Ohio, who may or may not own lands within said district. Each of the appraisers shall, before taking up his duties, take and subscribe to an oath that he will faithfully and impartially discharge his duties as such appraiser, and that he will make a true report of such work done by him. The said appraisers shall at their first meeting elect one of their own number chairman, and the secretary

**Section 6828-26**  
Appointment of appraisers; qualifications, duties.

of the board of directors or his deputy shall be ex-officio secretary of said board of appraisers during their continuance in office. A majority of the appraisers shall constitute a quorum, and a concurrence of the majority in any matter within their duties shall be sufficient for its determination. Said appraisers shall continue to hold their offices until excused by the court, and the court shall fill all vacancies in the board of appraisers, or may appoint a new board for subsequent appraisals, as occasion may require. Such new board, if appointed, shall fill all the requirements of the board of appraisers of the district, and perform its duties.

**Section  
5828-27**

Duties of board  
of appraisers.

**SECTION 27. APPRAISALS.** During the preparation of the Official Plan, the board of appraisers shall examine and become acquainted with the nature of plans for the improvement and of the lands and other property affected thereby, in order that they may be better prepared to make appraisals.

When the Official Plan is filed with the secretary of the district he shall at once notify the board of appraisers, and they shall thereupon proceed to appraise the benefits of every kind to all real property within or without the district, which will result from the organization of said district and the execution of the Official Plan; and also to appraise the damages sustained and the value of the land and other property necessary to be taken by the district for which settlement has not been made by the board of directors. In the progress of their work, they shall have the assistance of the attorney, engineers, secretary and other agents and employees of the board of directors.

The board of appraisers shall also appraise the benefits and damages, if any, accruing to cities, villages, counties, townships and other public corporations, as political entities, and to the State of Ohio.

Before appraisals of compensation and damages are made, the directors of the district may report to the appraisers the parcels of land or other property they may wish to purchase and for which they may wish appraisals to be made, both for easement and for purchase in fee simple. The board may, if it deems best, specify in case of any property the particular purpose for which and the extent to which an easement in the same is desired, describing definitely such purpose and extent. The appraisers shall appraise all damages which may, because of the execution of the Official Plan, accrue to real or other property either within or without the district, which damages shall also represent easements acquired by the district for all of the purposes of the district, unless otherwise specifically stated. Wherever instructed to do so by the board of directors, they shall appraise lands or other property which it may be necessary or desirable for the district to own, and when instructed by the directors to do so they shall appraise both the total value of the land, and also the damages due to an easement for the purposes of the district. Upon such appraisals being confirmed by the court, the directors of the district shall have the option of paying the entire appraised value of the property and acquiring full title to it (in fee simple), or of paying only the cost of such easement for the purposes of the district. The appraisers in appraising benefits and damages shall consider only the effect of the execution of the Official Plan. The appraisers in making appraisals shall give due consideration and credit to any other works or other systems of reclamation already constructed, or under construction, which form a useful part of the work of the district according to the Official Plan. Where the appraisers or a jury, in

case one is called, return no appraisal of damages to any property, it shall be deemed a finding by them that no damages will be sustained.

**SECTION 28. LAND AFFECTED OUTSIDE DISTRICT.** If the appraisers find that lands or other property not embraced within the boundaries of the district will be affected by the proposed improvement, or should be included in the district, they shall appraise the benefits and damages to such land, and shall file notice, in the court, of the appraisal which they have made upon the lands beyond the boundaries of the district, and to the land which in their opinion should be included in the district. The appraisers shall also report to the court any lands which in their opinion should be eliminated from the district.

**Section  
6828-28**

Lands affected  
outside of  
district.

**SECTION 29. NOTICE OF HEARING ON LAND EXCLUDED FROM OR TAKEN INTO DISTRICT.** If the report of the board of appraisers includes recommendations that other lands be included in the district, or that certain lands be excluded from the district, it shall be the duty of the clerk of the court before which the proceeding is pending to give notice to the owners of such property by publication to be made as provided in this act for a hearing on the petition for the creation of the district. Such notice to those owners whose lands are to be added to the district may be substantially as shown in the Schedule herein. The time and place of the hearing may be the same as those of the hearing on appraisals. To the owners of property to be excluded from the district it will be sufficient to notify them of that fact.

**Section  
6828-29**

Notice of  
hearing on  
land excluded  
from or taken  
into district.

**SECTION 30. BOARD SHALL MAKE REPORT.** The board of appraisers shall prepare a report of its findings which shall be arranged in tabular form and bound in book form, and which shall be known as the Conservancy Appraisal Record. Such record shall contain the name of the owner of property appraised as it may appear on the tax duplicate or the Deed Records, a description of the property appraised, the amount of benefits appraised, the amount of damages appraised, and the appraised value of land or other property which may be taken for the purposes of the district. They shall also report any other benefits or damages or any other matter which in their opinion should be brought to the attention of the court. No error in the names of the owners of real property or in the descriptions thereof shall invalidate said appraisal or the levy of assessments or taxes based thereon, if sufficient description is given to identify such real property.

**Section  
6828-30**

Report of  
board shall be  
known as con-  
servancy  
appraisal  
record;  
contents.

When their report is completed, it shall be signed by at least a majority of the appraisers and deposited with the clerk of the court who shall file it in the original case. At the same time copies of that part of the report giving the appraisal of benefits and appraisals of land to be taken and of damages, in any county shall be made, certified to, and filed with the clerk of the Court of Common Pleas of such county.

**Section  
6828-31**

Notice of  
hearing on  
appraisals;  
description of  
land.

**SECTION 31. NOTICE OF HEARING ON APPRAISALS.** Upon the filing of the report of the appraisers, the clerk of the court shall give notice thereof, as provided in this act, in each county in the district. Said notice shall be sub-

stantially as in Form 6 of the Schedules hereto attached. It shall not be necessary for said clerk to name the parties interested.

It shall not be necessary to describe separate lots or tracts of land in giving said notice, but it shall be sufficient to give such descriptions as will enable the owner to determine whether or not his land is covered by such description. For instance, it will be sufficient to state "All land lying in the..... Ward of the City of ....." or "All land abutting on ..... Street in the City of ....." or "All land lying west of ..... River and east of ..... Railroad in ..... Township," or any other general description pointing out the lands involved.

Where lands in different counties are mentioned in said report, it shall not be necessary to publish a description of all the lands in the district in each county, but only of that part of the said lands situate in the county in which publication is made.

#### **Section 6828-32**

Hearing on  
appraisals;  
exceptions to  
appraisals.

**SECTION 32. HEARING ON APPRAISALS.** Any property owner may accept the appraisals in his favor of benefits and of damages and of lands to be taken made by the appraisers, or may acquiesce in their failure to appraise damages in his favor, and shall be construed to have done so unless he shall within ten (10) days after the last publication provided for in the preceding section file exceptions to said report or to any appraisal of either benefits or damages or of land to be taken which may be appropriated. All exceptions shall be heard by the court beginning not less than twenty (20) nor more than thirty (30) days after the last publication provided for herein, and determined in advance of other business so as to carry out, liberally, the purposes and needs of the district. The court may, if it deem necessary, return the report to the board of appraisers for their further consideration and amendment, and enter its order to that effect. If, however, the appraisal roll as a whole is referred back to the appraisers, the court shall not resume the hearing thereof without new notice, as for an original hearing thereon. But the court may, without losing jurisdiction over the roll, order the appraisers to recast the roll when the order of the court specifies the precise character of the changes thereof.

#### **Section 6828-33**

Decree on  
appraisals.

**SECTION 33. DECREE ON APPRAISALS.** If it appears to the satisfaction of the court after having heard and determined all said exceptions that the estimated cost of constructing the improvement contemplated in the Official Plan is less than the benefits appraised, then the court shall approve and confirm said appraisers' report as so modified and amended, and such findings and appraisals shall be final and incontestible. In considering the appraisals made by the board of appraisers, the court shall take cognizance of the Official Plan and of the degree to which it is effective for the purposes of the district. In case the court shall find that the estimated benefits appraised are less than the total costs of the execution of the Official Plan, exclusive of interest on deferred payments, or that the Official Plan is not suited to the requirements of the district, it may at its discretion return said Official Plan to the directors of the district with the order for them to prepare new or amended plans, or it may disorganize the district after having provided for the payment of all expenditures.



**SECTION 34. APPEAL FROM AWARD.** Any person, or public or private corporation desiring to appeal from an award as to compensation or damages or benefits, shall within ten (10) days from the judgment of the court confirming the report of the appraisers, file with the clerk of the court a written notice making demand for a jury trial. He shall at the same time file a bond with good and sufficient security to be approved by the clerk in the sum of not more than two hundred dollars (\$200) to the effect that if the appellant does not recover more by the verdict of the jury than the sum awarded him by the appraisers or if the verdict is not more favorable to him, he will pay the costs of the appeal. He shall state definitely from what part of the order he appeals.

**Section  
6828-34**

Appeal from  
award : bond.

The appeal shall be from the award of compensation or damages or benefits, or one or more of them, but from no other part of the decree of the court.

In case more than one appeal is entered from the awards as to compensations or damages or benefits in the same county, the court may, upon a showing that the same may be consolidated without injury to the interests of any one, consolidate and try the same together.

Upon demand for a jury the court shall order the directors to at once begin condemnation proceedings, according to law, in the county in which the lands are situated which are sought to be condemned or appraised in the Court of Common Pleas of such county, which suit shall be proceeded with in accordance with the statute regulating appropriation by other than municipal corporations. And said court shall have full jurisdiction to act.

Procedure  
when jury  
demanded.

In case an appeal is taken to a jury from the assessment of benefits, the court shall direct the directors to present a petition embodying the facts and the claim they make in short form, which shall be filed in the county in which the land is situated. Whereupon a jury shall be empaneled according to law to try the issue presented.

**SECTION 35. ENTRY AFTER DEPOSIT OF AWARD.** No property shall be taken under this act until compensation has been paid according to law. But where a trial is had by jury, and a verdict has been rendered which has been confirmed by the court, the board of directors may pay the amount allowed into court in money with the costs, and thereupon the court shall make an order admitting the said corporation into possession of the property and confirming its title thereto, although the owner may take steps to take the case to a higher court. And thereupon the board of directors may enter into undisturbed possession of the property and rights involved.

**Section  
6828-35**

Entry upon  
property after  
deposit of  
award.

**SECTION 36. FILING DECREE.** Upon the entry of the order of the court approving the report of the appraisers, as provided for in this act, the clerk of said court in which the same is entered shall transmit a certified copy of the said decree, and of the appraisals as confirmed by the court, except those parts from which appeals have been perfected but not determined, to the secretary of the district.

**Section  
6828-36**

Filing decree :  
copy to secre-  
tary of district.

When any appeal has been finally determined, the clerk of that court shall certify the amount of each item of the judgment to the clerk of the court having the original case, who shall file the same therein and thereupon transmit certified copies of the same as in this section above provided.

**Section  
6828-37**

Change of plan  
on approval by  
board and  
court.

**SECTION 37. CHANGE OF OFFICIAL PLAN.** The board of directors may at any time, when necessary to fulfill the objects for which the district was created, alter or add to the Official Plan, and when such alterations or additions are formally approved by the board and by the court, and are filed with the secretary, they shall become parts of the Official Plan for all purposes of this act. Where such alterations or additions in the judgment of the court neither materially modify the general character of the work, nor materially increase resulting damages for which the board is not able to make amicable settlement, nor increase the cost more than ten (10) per cent, no action other than a resolution of the board of directors shall be necessary for the approval of such alterations or additions. In case the proposed alterations or additions materially modify the general character of the work or materially modify the resulting damages or materially reduce the benefits, for which the board is not able to make amicable settlement, or materially increase the benefits in such a manner as to require a new appraisal, or increase the cost more than ten (10) per cent., the court shall direct the board of appraisers (which may be the original board, or a new board appointed by the court on petition of the board of directors or otherwise), to appraise the property to be taken, benefited or damaged, by the proposed alterations or additions. Upon the completion of the report by the board of appraisers, notice shall be given and a hearing had on their report in the same manner as in the case of the original report of the board of appraisers, and the same right of appeal to a jury shall exist. Provided; That where few land owners are affected, the clerk of the court may, on order of the court, if found to be more economical and convenient, give personal notice of the pendency of the report of said appraisers, instead of notice by publication; and Provided; That when the only question at issue is additional damages or reduction of benefits to property, due to modifications or additions to the plans, the board of directors may, if they find it practicable, make settlements with the owners of the property damaged, instead of having appraisals made by the board of appraisers. In case such settlements are made, notice and hearing need not be had. After bonds have been sold, in order that their security may not be impaired, no reduction shall be made in the amount of benefits appraised against property in the district, but in lieu of such reductions in benefits, if any are made, the amount shall be paid to the party in cash. This provision shall apply to all changes in appraisals under this act.

**Section  
6828-38**

Appeals shall  
not delay  
proceedings.

**SECTION 38. APPEALS NOT TO DELAY PROCEEDINGS.** No appeal under this act shall be permitted to interrupt or delay any action or the prosecution of any work under this act, except where the party appealing is entitled to a jury under the constitution of the state, and such jury trial has not been had; in which case, only so much of the work shall be interrupted or delayed as would constitute a taking of or a damaging of the property of the appellant.

The board of directors of any district organized under the terms of this act shall have the right to appeal from any order of the Court of Common Pleas made in any proceeding under this act, not requiring the intervention of a jury.

The failure to appeal from any order of the court in any proceedings under this act within the time specified herein shall constitute a waiver of any



irregularity in the proceedings, and the remedies provided for in this act shall exclude all other remedies except as herein provided.

**SECTION 39. LANDS EXEMPT AND LATER LIABLE TO ASSESSMENT.** If any lands in any district organized under this act are not liable for taxation or assessment at the time of the execution of the work, but afterwards, during the period when such work is being paid for, become liable to taxation or assessment by reason of some change in condition or ownership, such lands shall thereupon be appraised and assessed as other lands in said district receiving equal benefits.

**Section  
6828-39**

Lands exempt  
and later liable  
to assessment.

**SECTION 40. SUBSEQUENT APPRAISALS.** In case any real property within or without any district is benefited which for any reason was not appraised in the original proceedings, or was not appraised to the extent of benefits received, or in case any individual, corporation, municipality, political subdivision, or other district shall make use of or profit by the works of any district organized under this act to a degree not compensated for in the original appraisal, or in case the directors of the district find it necessary, subsequent to the time when the first appraisals are made, to take or damage any additional property, the directors of said district, at any time such condition becomes evident, shall direct the board of appraisers to appraise the benefits or the enhanced benefits received by such property, or such damages or value of property taken, and proceedings outlined in this act for appraising lands not at first included within the boundaries of the district shall in all matters be conformed with, including notice to the party or parties. Or the board may, at its discretion, make any suitable settlement with such individual, or other district, corporation, county or municipality for such use, benefit, damage or property taken.

**Section  
6828-40**

Subsequent  
appraisals.

**SECTION 41. PROCEEDINGS NOT INVALID.** No fault in any notice or other proceedings shall affect the validity of any proceeding under this act except to the extent to which it can be shown that such fault resulted in a material denial of justice to the property owner complaining of such fault.

**Section  
6828-41**

When fault or  
defect does not  
affect validity  
of proceedings.

In case it is found upon a hearing that by reason of some irregularity or defect in the proceedings the appraisal has not been properly made, the court may nevertheless, on having proof that expense has been incurred which is a proper charge against the property of the complainant, render a finding as to the amount of benefits to said property, and appraise the proper benefits accordingly, subject to a claim for a jury as already provided, where the party is entitled thereto, and thereupon said land shall be assessed as other land equally benefited. In the event that at any time either before or after the issuance of bonds pursuant to the provisions of this act, the appraisal of benefits, either as a whole or in part, be declared by any court of competent jurisdiction to be invalid by reason of any defect or irregularity in the proceedings therefor, whether jurisdictional or otherwise, the said Court of Common Pleas is hereby authorized and directed on the application of the Board of Directors of the said District or on the application of any holder of any bonds which may have been issued pursuant hereto, promptly and without delay to remedy all defects or irregularities as the case may require, by directing and causing to be made in the manner hereinbefore pro-

vided, a new appraisal of the amount of benefits against the whole or any part of the lands in the said District as the case may require.

## V. FINANCIAL ADMINISTRATION.

Section  
6828-42

Moneys shall  
consist of three  
separate funds.

SECTION 42. FUNDS. The moneys of every conservancy district organized hereunder shall consist of three separate funds: (1) *Preliminary Fund*, by which is meant the proceeds of the ad valorem tax authorized by this act and such advancements as may be made from the general county funds as provided in Section 43 of this act; (2) *Bond Fund*, by which is meant the proceeds of levies made against the special assessments of benefits equalized and confirmed under the provisions of this act; and (3) *Maintenance Fund*, which is a special assessment to be levied annually for the purpose of upkeep, administration and current expenses as hereinafter provided. It is intended that the cost of preparing the Official Plan, the appraisal (except as paid out of the Preliminary Fund) and the entire cost of construction and superintendence, including all charges incidental thereto, and the cost of administration during the period of construction, shall be paid out of the Bond Fund.

When vouchers  
drawn against  
certain funds.

No vouchers shall be drawn against the Preliminary Fund (except for advances from the general county funds) or against the Maintenance Fund until a tax-levying resolution shall have been properly passed by the board of directors, and duly entered upon its records; no bonds shall be issued against the Bond Fund until an assessment-levying resolution shall have been properly passed by the board of directors and duly entered upon its records, and until the property owners shall have been given an opportunity for a period of not less than thirty (30) days to pay the assessments so levied against their respective properties.

Section  
6828-43

Preliminary  
expenses, how  
paid.

SECTION 43. PRELIMINARY EXPENSES.—HOW PAID. After the filing of a petition under this act, and before the district shall be organized, the costs of publication and other official costs of the proceedings shall be paid out of the general funds of the county in which the petition is pending. Such payment shall be made on the warrant of the auditor on the order of the court. In case the district is organized, such cost shall be repaid to the county out of the first funds received by the district through levying of taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, then the cost shall be collected from the petitioners or their bondsmen. Upon the organization of the district, the court shall make an order indicating a preliminary division of the preliminary expenses between the counties included in the district in approximately the proportions of interest of the various counties as may be estimated by said court. And the court shall issue an order to the auditor of each county to issue his warrant upon the treasurer of his county to reimburse the county having paid the total cost.

Expenses incurred thereafter prior to the receipt of money by the district from taxes or assessments, bond sales, or otherwise, shall be paid from the general funds of the counties upon the order of the court and upon certification of the clerk of the court of such order specifying the amount and purpose of the levy, to the auditor of each county, who shall thereupon at once issue his warrant

to the treasurer of his county, said payments to be made in proportion of the order outlined by the court aforesaid. Upon receipt of funds by the district from the sale of bonds or by taxation or assessment the funds so advanced by the counties shall be repaid.

As soon as any district shall have been organized under this act, and a board of directors shall have been appointed and qualified, such board of directors shall have the power and authority to levy upon the property of the district not to exceed three-tenths of a mill on the assessed valuation thereof as a level rate to be used for the purpose of paying expenses of organization, for surveys and plans, and for other incidental expenses which may be necessary up to the time money is received from the sale of bonds or otherwise. This tax shall be certified to the auditors of the various counties and by them to the respective treasurers of their counties. If such items of expense have already been paid in whole or in part from other sources, they may be repaid from the receipts of such levy, and such levy may be made although the work proposed may have been found impracticable or for other reasons is abandoned. The collection of such tax levy shall conform in all matters to the collection of taxes and assessments for the district outlined in this act, and the same provisions concerning the non-payment of taxes shall apply. The board may borrow money in any manner provided for in this act, and may pledge the receipts from such taxes for its repayment, the information collected by the necessary surveys, the appraisal of benefits and damages, and other information and data being of real value and constituting benefits for which said tax may be levied. In case a district is disbanded for any cause whatever before the work is constructed, the data, plans and estimates which have been secured shall be filed with the clerk of the court before which the district was organized and shall be matters of public record available to any person interested.

Levy to pay expenses; rate.

**SECTION 44. MAY BORROW MONEY.** In order to facilitate the preliminary work, the board may borrow money at a rate of interest not exceeding six per cent. per annum, may issue and sell or pay to contractors or others, negotiable evidence of debt (herein called warrants) therefor signed by the members of the board, and may pledge (after it has been levied) the Preliminary Tax of not exceeding three-tenths of a mill for the repayment thereof. If any warrant issued by the board of directors is presented for payment and is not paid for want of funds in the treasury, that fact with the date of refusal shall be endorsed on the back of such warrant, and said warrant shall thereafter draw interest at the rate of six per cent. until such time as there is money on hand sufficient to pay the amount of said warrant with interest.

**Section 6828-44**

Power to borrow money.

**SECTION 45. BOARD OF DIRECTORS TO LEVY ASSESSMENT FOR BOND FUND.— ADDITIONAL LEVIES.** After the list of real property, with the appraised benefits as approved by the court, or that part thereof from which no appeal is pending, has been filed with the secretary of the district, then from time to time, as the affairs of the district demand it, the board of directors shall levy on all real property, upon which benefits have been appraised, an assessment of such portion of said benefits as may be found necessary by said board to pay the cost of the execution of the Official Plan including superintendence of constructions

**Section 6828-45**

When board may levy assessment for bond fund; additional levies, assessment record.

and administration, plus ten per cent. of said total, to be added for contingencies, but not to exceed, in the total of principal, the appraised benefits so adjudicated. The said assessment shall be apportioned to and levied on each tract of land or other property in said district in proportion to the benefits appraised, and not in excess thereof, and in case bonds are issued as provided herein and hereafter, then the amount of interest, which will accrue on such bonds, as estimated by said board of directors, shall be included in and added to the said assessment, but the interest to accrue on account of the issuing of said bond shall not be construed as a part of the cost of construction in determining whether or not the expenses and costs of making said improvement are or are not equal to or in excess of the benefits appraised. As soon as said assessment is levied, the secretary of the board of directors, at the expense of the district, shall prepare in duplicate an assessment record of the district. It shall be in a well-bound book endorsed and named, "Conservancy Assessment Record of ..... District." It shall contain in tabular form a notation of the items of property appraised, the total amount of benefits appraised against each item, and the total assessment levied against each item. Where successive levies of assessment are made for the Bond Fund, the Conservancy Assessment Record shall contain suitable notation to show the number of levies and the amount of each, to the end that the Conservancy Assessment Record may disclose the aggregate of all levies for the Bond Fund up to that time.

Upon the completion of such record it shall be signed and certified by the president and secretary of the board of directors, attested by the seal of the district, and the same shall thereafter become a permanent record in the office of said district. A copy of that part of the Conservancy Assessment Record affecting lands in any county shall be filed with the auditor of such county.

If it should be found at any time that the total amount of assessments levied is insufficient to pay the cost of works set out in the Official Plan or of additional work done, the board of directors may make an additional levy to provide funds to complete the work, provided the total of all levies of such assessment exclusive of interest does not exceed the total of benefits appraised.

#### Section 5828-46

When property  
owners may  
pay assessment  
in full.

SECTION 46. PROPERTY OWNERS MAY PAY ASSESSMENT IN FULL. When the assessment roll is placed on file in the office of the district, notice by publication shall be given to property-owners that they may pay their assessments. Any provision of real property assessed for the execution of the Official Plan under the provisions of this act shall have the privilege of paying such assessment to the treasurer of the board of directors within thirty (30) days from the time such assessment is placed on file in the office of the district, and the amount to be paid shall be the full amount of the assessment less any amount added thereto to meet interest. When such assessment has been paid, the secretary of the board shall enter upon the said assessment record opposite each tract for which payment is made the words "Paid In Full," and such assessment shall be deemed satisfied. The payment of such assessment shall not relieve the land owner from the necessity for the payment of a maintenance assessment nor for payment of any further assessment which may be necessary as herein provided. Any property-owner failing to pay assessments in full as provided for herein shall be deemed to have consented to the issuance of bonds as provided for in this act, and to payment of interest thereon.

After the expiration of the period of thirty (30) days within which the property owners may pay their respective assessments, as limited herein, the treasurer of the district shall certify to the board of directors the aggregate of the amount so paid, and thereupon the board of directors shall pass and spread upon their records a Bonding Resolution in which shall be stated the amount of the assessment, and the amount thereof paid as aforesaid, and thereupon the board shall in the same resolution apportion the uncollected assessment into installments or levies, provide for the collection of interest upon the unpaid installments, and they may order the issuance of bonds (in an amount not exceeding ninety (90) per cent. of the levy) in anticipation of the collection of said installments. The residue of the tax so levied (not less than ten (10) per cent.) shall constitute a contingent account to protect the bonds from casual default, and any part thereof in excess of ten (10) per cent. of the next installment of maturing bond principal, together with the next two (2) installments of semi-annual interest, if not needed for this purpose, may be transferred from time to time to the Maintenance Fund of the district.

Procedure when assessments are unpaid.

**SECTION 47. BOARD OF DIRECTORS MAY ISSUE BONDS.—HOW PAID.—FUNDS.—HOW TO BE USED.** The board of directors may, if in their judgment it seems best, issue bonds not to exceed ninety (90) per cent. of the total amount of the assessments, exclusive of interest, levied under the provisions of this act, in denomination of not less than one hundred dollars (\$100), bearing interest from date at a rate not to exceed six per cent. per annum, payable semi-annually, to mature at annual intervals within thirty (30) years, commencing not later than five (5) years, to be determined by the board of directors, both principal and interest payable at the office of the treasurer of the State of Ohio. Said bonds shall be signed by the president of the board of directors, attested with the seal of said district and by the signature of the secretary of the said board, and shall be registered by the treasurer of the State of Ohio. In case any of the officers whose signatures, counter-signatures or certificates appearing upon bonds or coupons issued pursuant to this act, shall cease to be such officer before the delivery of such bonds to the purchaser, such signatures, or counter-signatures and certificate shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until the delivery of the bonds. All of said bonds shall be executed and delivered to the treasurer of said district, who shall sell the same in such quantities and at such dates as the board of directors may deem necessary to meet the payments for the works and improvements of the district. Said bonds, if bearing less than six per cent. interest, may be sold below par, but they shall be sold at such a price that the total payment of principal and interest shall not be greater than would have been required, if the bonds had borne six per cent. interest and had sold for par and accrued interest. They shall show on their face the purpose for which they are issued, and shall be payable out of money derived from the Bond Fund. A sufficient amount of the assessment shall be appropriated by the board of directors for the purpose of paying the principal and interest of bonds and the same shall, when collected, be set apart in a separate fund for that purpose and no other. All bonds and coupons not paid at maturity shall bear interest at the rate of six per cent. per annum from maturity until paid, or until sufficient funds have been deposited at the place of payment. Any expenses incurred in paying said bonds and

**Section  
6828-47**

Board of directors may issue bonds; how paid. Funds; how to be used.

interest thereon and reasonable compensation to the state treasurer for registering and paying same, shall be paid out of the other funds in the hands of the district treasurer and collected for the purpose of meeting the expenses of administration. It shall be the duty of said board of directors in making the annual assessment levy, as heretofore provided, to take into account the maturing bonds and interest on all bonds, and to make ample provision in advance for the payment thereof. In case the proceeds of the original tax assessment made under the provisions of this act are not sufficient to pay the principal and interest of all bonds issued, then the board of directors shall make such additional levy or levies as are necessary for this purpose, and under no circumstances shall any assessment levies be made that will in any manner or to any extent impair the security of said bonds or the fund available for the payment of the principal and interest of the same. Said district treasurer shall, at the time of taking office, execute and deliver to the president of the board of directors of the said district, a bond with good and sufficient sureties, to be approved by the said board of directors, conditioned that he shall account for and pay over as required by law, and as ordered by said board of directors, any and all money received by him on the sale of such bonds, or any of them, or from any other source, and that he will only sell and deliver such bonds to the purchaser or purchasers thereof under and according to the terms herein prescribed, and that he will, when ordered by said board so to do, return to said board, duly cancelled, any and all bonds not sold, which said bonds shall remain in the custody of the said president of said board of directors, who shall produce the same for inspection or for use as evidence whenever and wherever legally requested so to do. The said treasurer shall promptly report all sales of bonds to the board of directors, and the board shall issue warrants at the proper time for the payment of the maturing bonds so sold and the interest payments coming due on all bonds sold, and the said treasurer shall place sufficient funds at the place of payment to pay the same. In case proper warrants are not issued by the board of directors as herein provided, then the treasurer shall of his own accord place funds at the place of payment and the cancelled bonds and coupons and the receipts of the state treasurer shall be accepted in lieu of warrants. The successor in office of any such district treasurer shall not be entitled to said bonds or the proceeds thereof until he shall have complied with all the foregoing provisions applicable to his predecessor in office; Provided, if it should be deemed more expedient to the board of directors, as to moneys derived from the sale of bonds issued or from any other source, said board may by resolution, select some suitable bank or banks or other depository, which depository shall give good and sufficient bond, as temporary or assistant treasurer or treasurers, to hold and disburse said moneys on the orders of the board as the work progresses, until such fund is exhausted or transferred to the treasurer by order of the said board of directors. For such deposits the district shall receive not less than two (2) nor more than four (4) per cent. interest per annum. The funds derived from the sale of said bonds or any of them shall be used for the purpose of paying the cost of the works and improvements and such costs, expenses, fees and salaries as may be authorized by law and shall be used for no other purpose.

If at the time the bonds are ready to be issued, the board shall be of the opinion that such bonds cannot advantageously be issued and sold in whole or

Additional  
levies : bond of  
treasurer.

Bank may be  
selected as  
depository.

in part, the board may sell parts only of the entire issue or may pledge all or part of said issue as collateral to a loan, but no partial sale or pledge shall be made without the order of the board made and entered of record, and no pledge shall be made at a greater margin than at the rate of one hundred dollars (\$100) of bond principal for ninety dollars (\$90) of loan.

The district may secure the payment of loans from the United States Government in the same manner as it may secure the payment of bonds, and the board of directors may make any necessary regulations to provide for such payment.

A party who has not sought a remedy against any proceeding under this act until after bonds have been sold or the work constructed, cannot for any cause have an injunction against the collection of taxes or assessments for the payment of said bonds.

This act shall, without reference to any other act of the Legislature of Ohio, be full authority for the issuance and sale of the bonds in this act authorized, which bonds shall have all the qualities of negotiable paper under the law merchant, and when executed and sealed and registered in the office of the State Treasurer in conformity with the provisions of this act, and when sold in the manner prescribed herein and the consideration therefor received by the district, shall not be invalid for any irregularity or defect in the proceedings for the issue and sale thereof, and shall be incontestible in the hands of bona fide purchasers or holders thereof for value. No proceedings in respect to the issuance of any such bonds shall be necessary except such as are required by this act. Whenever the owner of any coupon bond issued pursuant to the provisions of this act shall present such bond to the treasurer of the district with a request for the conversion of such bond into a registered bond, the said treasurer shall cut off and cancel the coupons of any such coupon bond so presented and shall stamp, print or write upon such coupon bond so presented, either upon the back or the face thereof, as may be convenient, a statement to the effect that the said bond is registered in the name of the owner and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter and from time to time, such bond may be transferred by such registered owner in person or by attorney duly authorized on presentation of such bond to the treasurer of the district and the bond again registered as before, a similar statement being stamped, printed or written thereon. Such statement stamped, printed or written upon any such bond may be substantially in the following form:

[Date, giving month, year and day]

This bond is registered pursuant to the statutes in such case made and provided, in the name of [here insert name of owner], and the interest and principal thereof are hereafter payable to such owner.

Treasurer.....Conservancy District.

If any bond shall be registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. The treasurer of the district shall enter in a register of said bonds to be kept by him or in a separate book, the fact of the registration of such bond and the name of the registered owner thereof, so that said register or book shall at all times show what bonds are registered and the name of the registered owner thereof.



**Section  
6828-48**

Conservancy  
maintenance  
assessment;  
apportionment  
of.

**SECTION 48. BOARD OF DIRECTORS MAY LEVY MAINTENANCE ASSESSMENT.** To maintain, operate and preserve the reservoirs, ditches, drains, dams, levees, canals or other improvements made pursuant to this act and to strengthen, repair and restore the same, when needed, and for the purpose of defraying the current expenses of the district, the board of directors may upon the substantial completion of said improvements and on or before the first day of September in each year thereafter, levy an assessment upon each tract or parcel of land and upon corporate property within the district, subject to assessments under this act, to be known as a "Conservancy Maintenance Assessment." Said Maintenance Assessment shall be apportioned upon the basis of the total appraisal of benefits accruing for original and subsequent construction, shall not exceed one per cent. thereof in any one year unless the court shall by its order authorize an assessment of a larger percentage, and shall be certified in duplicate to the auditor of each county in which lands of said district are situate, in the same book but in a separate column, or in a separate book kept for that purpose, in like manner and at the same time as the annual installment tax is credited, under the heading, "Maintenance Assessment." Said auditor shall certify the same to the treasurer of the county at the same time that he certifies the annual installment of the bond fund, and the sum of the installments of both funds for any tract may be certified as a single item. The treasurer shall demand and collect the Maintenance Assessment and make return thereof, and shall be liable for the same penalties for failure or neglect so to do, as may be provided herein for the annual installment of the assessment.

The amount of the Maintenance Tax paid by any parcel of land shall not be credited against the benefits assessed against such parcel of land; but the Maintenance Tax shall be in addition to any tax that has been or can be levied against the benefit assessment.

**Section  
6828-49**

Petition for  
readjustment  
of maintenance  
assessment;  
hearing.

**SECTION 49. PETITION FOR READJUSTMENT OF MAINTENANCE ASSESSMENTS.** Whenever the owners or representatives of twenty-five (25) per cent. or more of the acreage or value of the lands in the district shall file a petition with the clerk of the court in whose office the petition was filed, stating that there has been a material change in the values of the property in the district since the last previous appraisal of benefits, and praying for a readjustment of the appraisal of benefits for the purpose of making a more equitable basis for the levy of the maintenance assessment, the said clerk shall give notice of the filing and hearing of said petition in the manner hereinbefore provided.

Upon hearing of said petition if said court shall find there has been a material change in the value of property in said district since the last previous appraisal of benefits, the court shall order that there be a readjustment of the appraisal of benefits for the purpose of providing a basis upon which to levy the maintenance assessment of said district. Thereupon the court shall direct the appraisers of the conservancy district to make such readjustment of appraisal in the manner provided in this act, and said appraisers shall make their report; and the same proceedings shall be had thereon, as nearly as may be, as are herein provided for the appraisal of benefits accruing for original construction: Provided, that in making the readjustment of the appraisal of benefits said appraisal shall not be limited to the aggregate amount of the original or any previous appraisal of benefits, and that after the making of such readjustment the limita-



tion of the annual maintenance assessment to one per cent. of the total appraised benefits shall apply to the amount of the benefits as readjusted; and provided, further, that there shall be no such readjustment of benefits oftener than once in eight (8) years.

**SECTION 50. ANNUAL LEVY.** The board of directors shall each year thereafter determine, order and levy the part of the total assessments levied under this act, which shall become due and be collected during each year at the same time that state and county taxes are due and collected, which annual levy shall be evidenced and certified by said board not later than September 1st each year to the auditor of each county in which the real property of said district is situate. The certificate of said annual levy shall be substantially as in the Schedule herein.

**Section  
6828-50**  
Annual levy

Then shall follow a table or schedule showing in properly ruled columns:  
1. The names of the owners of said property, which may be as they appeared in the decree of the court confirming the appraisals. In case of a city, county, village or township, the names of individual owners need not be given, but only the name of the city, county, village or township. 2. The descriptions of the property opposite the names of the said owners. 3. The total amount of the said annual installment of all assessments on each piece of property for the account of all funds. 4. A blank column in which the auditor shall record the several amounts as collected by him. 5. A blank column in which the auditor shall record the date of payment of the different sums. 6. A blank column in which the auditor shall report the names of the person or persons paying the several amounts.

Conservancy  
assessment  
book; disposi-  
tion of copies.

The said certificate and report shall be prepared in triplicate in a well-bound book which shall be endorsed and named "Conservancy Assessment Book of ..... District, ..... County, Ohio," which endorsement shall also be printed at the top of each page in said book.

Two copies of that part of such triplicate affecting lands in any county shall be forwarded to the county auditor of such county, one for his use and one for the county treasurer, to whom the auditor shall certify one copy. It shall be the duty of the auditor of each county to receive the same as a Tax Book, and to certify the same as other tax records to the county treasurer of his county, whose duty it shall be to collect the same according to law. And such Tax Book or Assessment Book shall be the treasurer's warrant and authority to demand and receive the assessments due in his county as found in the same.

In the event of any failure or neglect of the board of directors of the district to determine and order an annual levy for the purpose of paying the interest and principal of any bonds pursuant to this act, it shall be the duty of the auditor of the county in which the lands subject to such assessments are situated, to make and complete a levy of the taxes or special assessments necessary for the said purpose against the lands in the said district, and each piece of property therein against which benefits shall have been appraised; any assessment so made and completed by the county auditor shall be made and completed by him in the manner hereinbefore provided for the making and completion of an assessment by the board of directors of the district, and shall have

the same force and effect as a levy of assessments determined and ordered by the board of directors.

**Section  
6828-51**

Duty of county  
officers.

**SECTION 51. DUTIES OF COUNTY OFFICERS.** The county treasurer of each county in which lands of the district lie, shall make due report to the auditor of the county of the sums collected by him, and it shall be the duty of the auditor to issue his warrant payable to the treasurer of the district for all sums of money in the hands of the treasurer of the county, according to his report as aforesaid. Said auditor shall, as soon as the books for collection are closed by the county treasurer according to law, make report to the treasurer of the said district of the sums collected, and of the assessments not collected, as returned to him by the treasurer of the county. The secretary of the board of directors shall thereupon provide a certified delinquent tax or assessment list, and forward the same in duplicate to the auditor of said county, who shall add the penalty fixed by law and transmit one copy to the treasurer of the county, who shall forthwith proceed to collect the said tax or levy or assessment and penalty, according to law.

Delinquent  
taxes, penalty.

All assessments or taxes provided for in this act, remaining unpaid after they become due and collectable, shall be delinquent and bear a penalty of two (2) per cent. a month from the date of closing the county treasurer's books until paid.

The return of the auditor shall be verified by affidavit.

**Section  
6828-52**

Bond of  
county  
treasurer.

**SECTION 52. BOND OF COUNTY TREASURER.** Before receiving the aforesaid "assessment book" the treasurer of each county in which lands or other property of the district are located, shall execute to the board of directors of the district a bond with at least two good and sufficient sureties or a surety company, and which shall be paid for by the district in a sum not less than the probable amount of any annual levy of said assessment to be collected by him during any one year, conditioned that said treasurer shall pay over and account for all assessments so collected by him according to law. Said bond after approval by said board of directors shall be deposited with the secretary of the board of directors who shall be custodian thereof and who shall produce same for inspection and use as evidence whenever and wherever lawfully requested so to do.

**Section  
6828-53**

Conservancy  
assessment to  
constitute a  
lien; how  
evidenced.

**SECTION 53. CONSERVANCY ASSESSMENT TO CONSTITUTE A LIEN.—HOW EVIDENCED.** All conservancy assessments and taxes provided for in this act, together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee, to be fixed by the court and taxed as costs in the action brought to enforce payment, shall, from date of filing the certificate herein described in the office of the auditor for the county wherein the lands and properties are situate, until paid, constitute a lien, to which only the lien of the state for general state, county, city, village, school and road taxes shall be paramount, upon all the lands and other property against which such taxes shall be levied as is provided in this act. Such lien may be evidenced by a certificate substantially in the form in the Schedule herein. The

certificate and tables shall be prepared in a well-bound book by the secretary of the board of directors at the expense of the district.

Unless expressly declared to the contrary, no warranty in any warranty deed or in any deed made pursuant to a judicial sale shall warrant against any portion of any assessment or assessments levied hereunder except past and current installments payable in the year which such deed or deeds bear date.

**SECTION 54. ASSESSMENT BOOK TO BE PRIMA FACIE EVIDENCE.—SUITS FOR ASSESSMENTS AND TAXES.—HOW BROUGHT.** The "Delinquent Conservancy Assessment Book" of the district shall be *prima facie* evidence in all courts of all matters therein contained. The liens established and declared in the preceding sections may be enforced at the option of the board of directors by an action on delinquent tax bills or assessment bills, made and certified by the county auditor, which action shall be instituted in the Court of Common Pleas without regard to the amount of the claim, within six (6) months after December 31st of the year for which said assessments were levied. The suit shall be brought in the corporate name of the district by its attorney against the land or lands, property or properties, on which such tax or assessment has not been paid. In the event of any default in the payment of the interest or principal of any bonds issued pursuant to this act, and if the said district or its proper officers shall fail or neglect to enforce the payment of any unpaid tax or assessment, the holder of such bonds may, for himself and for the benefit of all others similarly situated, enforce the said liens by suit or action against the land or lands, property or properties, on which such tax or assessment has not been paid, and against the said district, and the court shall have full power, jurisdiction and authority to apply the said tax when collected in the payment of the interest or principal upon the said bonds as justice and equity may require. The suit shall be brought in the county in which the property is situate, except when the tract of property sued upon be in more than one county, in which event the suit may be brought on the whole tract, parcel or property, in any county in which any portion thereof may be situate. The pleadings, process, proceedings, practice and sales, in cases arising under this act shall, except as herein provided, be the same as in an action for the enforcement of the state's lien for delinquent general taxes upon real estate. All sales of lands made under this section shall be by the sheriff, as is now provided under the general law. All sheriff's deeds executed and delivered pursuant to this act shall have the same probative force as other deeds executed by a sheriff. Abbreviations shall not defeat the action. The title acquired through any sale of lands or other property under the aforesaid proceedings shall be subject to the lien of all subsequent annual installments of conservation or drainage tax or assessment. In all suits for the collection of delinquent taxes or assessments, the judgment for said delinquent taxes or assessments and penalty shall also include all costs of suit and a reasonable attorney's fee to be fixed by the court, recoverable the same as the delinquent tax and in the same suit. The proceeds of sales made under and by virtue of this act shall be paid at once to the aforesaid county treasurer and shall be properly credited and accounted for by him the same as other conservation taxes and assessments.

If any assessment made pursuant to the provisions of this act shall prove invalid, the board of directors shall by subsequent or amended acts or proceed-

**Section  
6828-54**

Assessment book shall be prima-facie evidence.

How suits for assessments and taxes brought.

ings promptly and without delay remedy all defects or irregularities as the case may require by making and providing for the collection of new assessments or otherwise.

**Section  
6828-55**

Duties of  
officers of  
political sub-  
divisions, as to  
assessments.

**SECTION 55. DUTIES OF OFFICERS AS TO ASSESSMENTS.** Whenever, under the provisions of this act, an assessment is made or a tax levied against a county, city, village, or township, it shall be the duty of the governing or taxing body of such political subdivision, upon receipt of the order of the court which established the district, confirming the appraisal of benefits and the assessment based thereon, to receive and file the said order, and to immediately take all the legal and necessary steps to collect the same. It shall be the duty of the said governing or taxing body or persons to levy and assess a tax, by a uniform rate upon all the taxable property within the political subdivision, to make out the proper duplicate, certify the same to the auditor of the county in which such subdivision is, whose duty it shall be to receive the same, certify the same for collection to the treasurer of the county, whose duty it shall be to collect the same for the benefit of the conservancy district, all of said officers above named being authorized and directed to take all the necessary steps for the levying, collection and distribution of such tax.

Nothing in this section shall prevent the assessment of the real estate of other corporations or persons situated within such political subdivision, which may be subject to assessment for special benefits to be received.

Dissolution of  
district does  
not affect lien.

In the event of any dissolution or disincorporation of any Conservancy District organized pursuant to the provisions of this act, such dissolution or disincorporation shall not affect the lien of any assessment for benefits imposed pursuant to the provisions of this act, or the liability of any land or lands in such district to the levy of any future assessments for the purpose of paying the principal and interest of any bonds issued hereunder, and in that event, or in the event of any failure on the part of the officers of any district to qualify and act, or in the event of any resignations or vacancies in office, which shall prevent action by the said district or by its proper officers, it shall be the duty of the county auditor and of all other officers charged in any manner with the duty of assessing, levying and collecting taxes for public purposes in any county, municipality or political subdivision in which such lands shall be situated, to do and perform all acts which may be necessary and requisite to the collection of any such assessment which may have been imposed and to the levying, imposing and collecting of any assessment which it may be necessary to make for the purpose of paying the principal and interest of the said bonds. Any holder of any bonds issued pursuant to the provisions of this act or any person or officers being a party in interest, may either at law or in equity by suit, action or mandamus, enforce and compel performance of the duties required by this act of any of the officers or persons mentioned in this act.

**Section  
6828-56**

Penalty for  
failure of  
treasurer to  
pay over tax.

**SECTION 56. PENALTY FOR FAILURE OF TREASURER TO PAY OVER TAX.** If any county treasurer or other person entrusted with the collection of these assessments refuses, fails or neglects to make prompt payment of the tax or any part thereof collected under this act to the treasurer of said district upon his presentation of a proper demand, then he shall pay a penalty of ten (10) per cent. on the amount of his delinquency; such penalty shall at once become due and

payable and both he and his securities shall be liable therefor on his official bond. The said county treasurer shall retain for his services one per cent. of the amount he collects on delinquent taxes.

**SECTION 57. SURPLUS FUNDS AND ANNUAL REPORTS.** Any surplus funds in the treasury of the district may be used for retiring bonds, reducing the rate of assessment or for accomplishing any other of the legitimate objects of the district.

**Section  
6828-57**

Surplus funds  
and annual  
reports.

At least once a year, or oftener if the court shall so order, the board of directors shall make a report to the court of its proceedings and an accounting of receipts and disbursements to that date which shall be filed with the clerk of the court. Thereupon the court shall order the auditing of said accounts by public accountants of recognized standing who shall file their report thereon with the clerk of the court.

**SECTION 58. COMPENSATION OF OFFICIALS UNDER THIS ACT.** Each member of the board of directors shall receive five dollars a day and his necessary expenses for the time actually employed in performing his duties. Each appraiser shall receive ten dollars a day and his expenses for the time actually employed in his duties. Before any duties devolve upon a county auditor or a county treasurer under this act, the board of directors of the district shall consult them and agree upon the salaries for the extra clerical force, if any, required in their respective offices to carry out the requirements of the law by reason of the establishment of said district, and the said board of directors shall provide for and pay said salaries to said clerk or clerks, while engaged on the work of the district, which clerks shall be selected and appointed by each of said county officers for their respective offices. In case of disagreement as to the compensation of such extra clerical force, the matter shall be referred to the court for its determination.

**Section  
6828-58**

Compensation  
of officials.

## VI. INTERCORPORATE RELATIONS AND CONFLICT IN JURISDICTION

**SECTION 59. LANDS IN MORE THAN ONE DISTRICT.** The same land, if conducive to public health, safety, convenience or welfare, may be included in more than one district and be subject to the provisions of this act for each and every district in which it may be included, provided, that no district shall be organized under this act in whole or in part within the territory of a district already organized under this act until the court or courts determine whether the public health, safety, convenience or welfare demand the organization of an additional district, or whether it demand that the territory proposed to be organized into an additional district shall be added to the existing district; and in case the proceedings concerning two or more such districts are before the court of Common Pleas of two or more counties, such determination shall be as provided in the next section.

**Section  
6828-59**

Lands may be  
included in  
more than one  
district.

**SECTION 60. JURISDICTION.** In case any district or districts are being organized within, or partly within and partly without, the same territory in

**Section  
6828-60**

Jurisdiction  
in case of  
conflict, how  
determined.

3  
7

which some other district or districts have been or are being organized, one Common Pleas Judge of each county in which such districts have been or are being organized shall confer at the earliest convenient moment after they ascertain the possibility of a conflict in jurisdiction, the sitting to be had in the county having the largest assessed valuation in the proposed district or districts.

At such conference, the several judges shall determine to what extent the several districts should be consolidated or to what extent the boundaries should be adjusted in order to most fully carry out the purposes of this act; and they shall by suitable orders make such determination effective. In event notices have been issued or jurisdiction acquired in any proceeding concerning territory which is transferred to the Court of Common Pleas of another county such notice shall not become void and jurisdiction so acquired shall not be lost; but in each case the court acquiring jurisdiction over such transferred territory shall hold the same without further notice, as if originally embraced in said district. At such conferences, the decision of the majority of the judges shall be necessary for the determination of any matter, and from such decision, or from a failure to decide, appeal may be taken.

The provisions of this and of the preceding section shall not operate to delay or to interrupt any proceeding under this act until the question of jurisdiction has been finally determined by the court or courts.

**Section  
6828-61**

Union of  
districts;  
petition,  
notice, hear-  
ing, decree.

**SECTION 61. UNION OF DISTRICTS.** In case two or more districts have been organized under this act in a territory, which, in the opinion of the directors of either of the districts, should constitute but one district, the board of directors of any one of the districts may petition the court for an order uniting said districts into a single district. Said petition shall be filed in the office of the clerk of that county which has the greatest valuation of real property within the districts sought to be included, as shown by the tax duplicates of the respective counties. Said petition shall set forth the necessity for such union of the two or more districts and that the union of said districts would be conducive to the public health, convenience, safety or welfare, and to the economical execution of the purposes for which the districts were organized. Upon receipt of said petition, the clerk of said court shall give notice by publication, or by personal service, to the board of directors or boards of directors of the district or districts which it is desired to unite with the district of the petitioners. Such notice shall contain the time and place where the hearing on the petition will be had and the purpose of the same. Such hearing shall be had in accordance with the provisions of this act in original hearing. After the hearing, should the court find that the averments of the petition are true and that the said districts, or any of them, should be united, it shall so order, and thereafter such districts shall be united into one and proceed as such. The court shall designate the corporate name of such united district, and such further proceedings shall be taken as provided for in this act. The court shall direct in such order who shall be the directors of such united district, who shall thereafter have such powers and be subject to such regulations as are provided for directors in districts created in the first instance. All legal proceedings already instituted by or against any of such constituent districts may be revived and continued against such united district by an order of court sub-



stituting the name of such united district for such constituent district and such proceedings shall then proceed as herein provided.

Instead of organizing a new district from such constituent districts the court may, in its discretion, direct that one or more of such districts described in the petition be included into another of said districts which other shall continue under its original corporate name and organization, or it may direct that the district or districts so absorbed shall be represented on the board of directors of the original district, designating what members of the board of directors of the original district shall be retired from the new board and what members representing the included district or districts shall take their places; or it may direct that the included district or districts shall become subdistricts of the main district. In case the districts sought to be united were organized in different counties, then the court to determine the question involved shall consist of one judge from each of the counties in the court of which one of the districts was organized, and a majority shall be necessary to render a decision. From such a decision, or from a failure to decide, any interested property owner may appeal. No action under the provisions of this section shall operate to interrupt or delay any proceeding under this act until the questions involved are finally determined.

**SECTION 62. REMEDY FOR INJURY BY DISTRICT.** In case any person or public corporation, within or without any district organized under this act, shall consider itself injuriously affected in any manner whatsoever by any act performed by any official or agent of such district, or by the execution, maintenance or operation of the Official Plan, and in case no other method of relief is offered under this act, the remedy shall be as follows:

**Section  
6828-62**

Remedy for  
injury by  
district.

The person or public corporation considering itself to be injuriously affected shall petition the court before which said district was organized for an appraisal of damages sufficient to compensate for such injuries. The court shall thereupon direct the board of appraisers of the district to appraise said damages and injuries, and to make a report to the court on or before the time named in the order of the court. Upon the filing of said report of said board of appraisers, the court shall cause notice to be given to the petitioner and to the directors of the district, of a hearing on said report. At the time of such hearing, the court shall consider said report of said appraisers, and may ratify said report or amend it as the court may deem equitable or may return it to the said board of appraisers and require them to prepare a new report. Upon the filing of an order of the court approving said report of said appraisers with such modifications as it may have made said order shall constitute a final adjudication of the matter unless it shall be appealed from within twenty (20) days. Appeal to a jury from said order may be had as provided in the general appropriation statute by the petitioner, by the directors of the district, or by any person or corporation who has been assessed for the costs of the district. No damages shall be allowed under this section which would not otherwise be allowed in law.

**SECTION 63. SUBDISTRICTS.** Whenever it is desired to construct improvements wholly within or partly within and partly without any district organized under this act, which improvements will affect only a part of said district, for

**Section  
6828-63**

Subdistricts  
how organized.

the purpose of accomplishing such work, subdistricts may be organized upon petition of the owners of real property, within or partly within and partly without the district, which petition shall fulfill the same requirements concerning the subdistricts as the petition outlined in Section 3 of this act is required to fulfill concerning the organization of the main district, and shall be filed with the clerk of the same Court of Common Pleas, and shall be accompanied by a bond as provided for in Section 4 of this act. All proceedings relating to the organization of such subdistricts shall conform in all things to the provisions of this act relating to the organization of districts. Whenever the court shall by its order duly entered of record declare and decree such subdistricts to be organized, the clerk of said court shall thereupon give notice of such order to the directors of the district, who shall thereupon act also as directors of the subdistrict. Thereafter, the proceedings in reference to the subdistrict shall in all matters conform to the provisions of this act; except that in appraisal of benefits and damages for the purposes of such subdistricts, in the issuance of bonds, in the levying of assessments or taxes, and in all other matters affecting only the subdistrict, the provisions of this act shall apply to this subdistrict as though it were an independent district, and it shall not, in these things, be amalgamated with the main district.

The board of directors, board of appraisers, chief engineer, attorney, secretary and other officers, agents and employees of the district shall, so far as it may be necessary, serve in the same capacities for such subdistrict, and contracts and agreements between the main district and the subdistrict may be made in the same manner as contracts and agreements between two districts. The distribution of administrative expense between the main district and subdistrict shall be in proportion to the interests involved and the amount of service rendered, such division to be made by the board of directors with an appeal to the court establishing the district. This section shall not be held to prevent the organization of independent districts for local improvements under other laws within the limits of a district organized under this act, as provided in Sections 59 and 60 of this act.

Section  
1828-64

How other  
improvements  
may come  
under this act.

**SECTION 64. HOW OTHER IMPROVEMENTS MAY COME UNDER THIS ACT.** Any territory in which a proceeding has been instituted or is pending for the construction of a single or joint or interstate, county ditch, or township ditch, or underground drain, or levee, or county sewer, or for the cleaning of drains and water courses, or for the removal of drift, or for the drainage of marshes; or for any sewer district outside of a municipality, organized under any other law of this state, may become a district or subdistrict under this act or may be absorbed in and amalgamated with any district organized under the terms of this act in the following manner:

When the officials in charge of any such improvement, or the board of directors of any district organized under this act, which may desire to annex or absorb such territory, petition the court in which such district was organized under this act, or the court having jurisdiction over all or part of the territory affected by the proceeding which is desired to bring under this act, for an order making the territory affected by any of the improvements above noted a district or subdistrict under the terms of this act, or for amalgamating such territory with an existing district, organized under the



terms of this act, the clerk of the court shall give notice of the pendency of said petition and of a hearing thereon in the same manner as herein provided for notice and hearing on a petition for the organization of a district under this act. At the time of such hearing the court shall hear the evidence and shall grant the petition or deny the same as seems most advantageous to all the interests affected thereby. The court in its order shall specify whether such territory shall be organized into a district or subdistrict under the terms of this act, or whether it shall be absorbed in or amalgamated with an existing district, organized under this act. Thereafter the territory affected by said order and the improvements for which said territory was assessed, or for which contracts have been let therein, shall be subject to the terms of this act, and all such orders and procedures shall be had, as are necessary for fulfilling the requirements of this act: Provided, that no order of the court shall be made under this Section, which shall lessen the security of any issue of bonds or other obligations issued under the terms of this or any other statute.

If a proceeding sought to be joined to or amalgamated with a proceeding under this act is under the jurisdiction of a Common Pleas Court other than the one having jurisdiction of the district organized under this act, then at such hearing the Common Pleas Judge or Judges of the county or counties in which such ditch or other improvement is located shall sit with the Judge in whose county the district was established under this act, and a majority of those sitting shall be necessary to a decision: and from such decision or from a failure to decide appeal may be taken.

## VII. POLICE POWERS AND REGULATIONS.

SECTION 65. MAY POLICE DISTRICT. The board of directors shall have the right to police the works of the district, and in times of great emergency may compel assistance in the protection of such works, and shall, also, have the right to prevent persons, vehicles or live stock from passing over the works of the district in any manner which would result in damage thereto.

**Section  
6828-65**

Right to police  
district.

SECTION 66. INJURY TO SURVEY MARKS PROHIBITED. The willful destruction, injury or removal of any bench marks, witness marks, stakes or other reference marks, placed by the surveyors or engineers of the district or by contractors in constructing the works of the district, shall be a misdemeanor, punishable by fine not exceeding one hundred dollars (\$100).

**Section  
6828-66**

Injury to  
survey marks  
prohibited;  
penalty.

SECTION 67. OWNERS LIABLE FOR DAMAGE TO DISTRICT. All persons and corporations shall be liable for damage done to works of the district by themselves, their agents, their employees, or by their live stock. All persons guilty of willful damage shall be guilty of a misdemeanor, and shall be fined not to exceed five hundred dollars (\$500.) and costs, and shall be liable for all damages and costs. The board of directors shall have authority to repair such damage at the expense of the person or corporation committing it.

**Section  
6828-67**

Owners are  
liable for  
damage to  
district.

**Section  
6828-68**Penalty for  
fraud.

**SECTION 68. PENALTY FOR FRAUD.** The making of profit, directly or indirectly, by any officer of any district organized under this act, or by any other public officer within the state, out of any contracts entered into by the district, or use of any money belonging to district by loaning it or otherwise using it, or by depositing the same in any manner, contrary to law, or by removal of any money by any such officer or by his consent and placing it elsewhere than is prescribed either by law or by the official acts of the board of directors, for the purpose of profit, shall constitute a felony, and on conviction thereof shall subject such officer to imprisonment in the state penitentiary for a term not exceeding two (2) years, or a fine not exceeding five thousand dollars (\$5,000), or both fine and imprisonment, and the officer offending shall be liable personally and upon his official bond for all losses to such district and for all profits realized by such unlawful use of moneys.

**Section  
6828-69**Removal of  
officials for  
cause.

**SECTION 69. OFFICIALS REMOVED FOR CAUSE.** Any director, appraiser or other officer of any district organized under this act may be removed for cause upon a motion filed in the original case where said district was organized, after a hearing.

**Section  
6828-70**Performance  
of duties  
enforced by  
mandamus.

**SECTION 70. PERFORMANCE OF DUTIES ENFORCED BY MANDAMUS.** The performance of all duties prescribed in this act concerning the organization and administration or operation of the district may be enforced against any officer or against any person or corporation refusing to comply with any order of the board by mandamus at the instance of the board or of any person or corporation interested in any way in such district or proposed district. And the board may institute such proceedings in the Court of Appeals in the first instance.

## VIII. IRRIGATION.

**Section  
6828-71**

Irrigation.

**SECTION 71. IRRIGATION.** Districts may be formed under the provisions of this act, for irrigation, by a substantial compliance with the terms as near as possible. But no such district in its construction or operation shall in any manner interfere with works for the prevention of floods, or the drainage of lands, or materially diminish their protective value. And the court organizing such irrigation district shall require a statement in the petition and proof to the effect that the organization and operation of the same will not materially interfere with any works or plans for flood prevention or the drainage or protection of lands. Nor shall any improvement under this act deprive the owners of lands lying upon any stream of water, of the ordinary flow in said stream without compensation therefor.

Subject to the above, the board of directors shall have the same powers as are herein conferred generally by its provisions so far as applicable.

Taxes shall be levied and bonds issued as already provided, using the words "Conservancy Taxes" or "Bonds."

## IX. CONSTRUCTION AND INTERPRETATION.

**SECTION 72. FAULTY NOTICE—HOW CORRECTED.** In any and every case where a notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void; but the court shall in that case order due notice to be given, and shall continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

**Section  
6828-72**

Faulty notice,  
how corrected.

In case any individual appraisal or appraisals, assessment or assessments, or levy or levies, shall be held void for want of legal notice, or in case the board may determine that any notice with reference to any land or lands may be faulty, then the board may file a motion in the original cause asking that the court order notice to the owner of such land or lands given and set a time for hearing as provided in this act. And in case the original notice as a whole was sufficient, and was faulty only with reference to publication as to certain tracts, only the owners of and persons interested in those particular tracts need be notified by such subsequent notice. And if the publication of any notice in any county was defective or not made in time, publication of the defective notice need be had only in the county in which the defect occurred.

**SECTION 73. QUESTION OF VALIDITY ADVANCED IN COURTS.** All cases in which there arises a question of the validity of the organization of conservancy districts shall be advanced as a matter of immediate public interest and concern, and heard in all courts at the earliest practicable moment.

**Section  
6828-73**

Question of  
validity  
advanced in  
courts.

The court shall be open at all times for the purposes of this act.

**SECTION 74. TO BE LIBERALLY CONSTRUED.** This act being necessary for securing the public health, safety, convenience or welfare, and being necessary for the prevention of great loss of life and for the security of public and private property from floods and other uncontrolled waters, it shall be liberally construed to effect the control and conservation and drainage of the waters of this state.

**Section  
6828-74**

Liberal  
construction.

**SECTION 75. IF PART DECLARED UNCONSTITUTIONAL.** In case any section or sections or part of any section of this act shall be found to be unconstitutional, the remainder of the act shall not thereby be invalidated, but shall remain in full force and effect.

**Section  
6828-75**

Part unconsti-  
tutional does  
not invalidate  
remainder.

**SECTION 76. WHAT OTHER ACTS ARE REPEALED.** All acts or parts of acts conflicting in any way with any of the provisions of this act, in regard to improvements of this or a similar character, or regulating or limiting power of taxation or assessment, or otherwise interfering with the execution of this law according to its terms, are hereby declared inoperative and ineffective as to this act, as if they did not exist. But all such laws and parts of laws shall not

**Section  
6828-76**

Acts repealed

be in any other way affected by this law. This act shall not repeal the act passed April 10, 1913, and approved April 12, 1913, volume 103, page 141, Ohio Laws, but it shall be an additional remedy.

**Section  
6828-77**

Short forms  
and  
abbreviations.

**SECTION 77. SHORT FORMS AND ABBREVIATIONS.** For the sake of convenience:

(a) In any orders of court the words "*The court now here finds that it hath jurisdiction of the parties to and of the subject matter of this proceeding*" shall be equivalent to a finding that each jurisdictional fact necessary to confer plenary jurisdiction upon the court, beginning with the proper signing and filing of the initial petition to the date of the order to meet every legal requirement imposed by this act.

(b) No other or further evidence of the legal hypothecation of the special tax to the payment of the bonds shall be required than the passage of a bonding resolution by the board of directors and the issuance of bonds in accordance therewith.

(c) In the preparation of any assessment or appraisal roll the usual abbreviations employed by engineers, surveyors and abstractors may be used.

(d) Where properly to describe any parcel of land, it would be necessary to use a long description, the appraisers after locating the land generally, may refer to the book and page of the public record of any instrument in which the land is described, which reference shall suffice to identify for all purposes of that act the land described in the public record so referred to.

(e) It shall not be necessary in any notice required by this act to be published to specify the names of the owners of the lands or of the persons interested therein; but any such notice may be addressed "*To All Persons Interested*" with like effect as though such notice named by name every owner, of any lands within the territory specified in the notice and every person interested therein, and every lienor, actual or inchoate.

(f) Every district declared upon hearing to be a Conservancy District shall thereupon become a political subdivision and a public corporation of the State of Ohio, invested with all the powers and privileges conferred upon such districts by this act.

## X. SCHEDULE.

**SECTION 78. FORMS AND SUGGESTIONS.** The following forms may suffice to illustrate the character of the procedure contemplated by this act; and if substantially complied with, those things being changed which (to meet the requirements of the particular case) should be changed, such procedure shall be held to meet the requirements of this act.

**Section  
6828-78**

Forms and  
Suggestions.

1. *Form of notice of hearing on the petition:*  
*To All Persons Interested:*

*Public Notice is Hereby Given:*

1. That on the .... day of ....., 19.., pursuant to the provisions of The Conservancy Act of Ohio, there was filed in the office of the Clerk of the Court of Common Pleas of ..... County, Ohio, the petition of ..... and others for the establishment of a Conservancy District to be known as ..... CONSERVANCY DISTRICT. [Here insert the purposes.]

2. That the lands sought to be included in said District comprise lands in ..... and ..... Counties, Ohio, described substantially as follows:

Beginning on the north line of ..... County at its point of intersection with the west bank of the ..... River; thence west along the north line of ..... County to the high bluffs facing said ..... River on the west; thence following the base of the line of said bluffs to the north line of the right of way of the ..... Railroad; thence west along the north right of way line of said railroad to the center line of ..... avenue in the Village of .....; thence south along the center line of ..... avenue to the ..... Pike; thence southeasterly along the ..... Pike to the southeasterly line of the right of way of the ..... Railroad; thence southeasterly along said right of way line to the corporate limits of the City of .....; thence with said corporation line southerly, easterly and northerly to the southerly right of way line of the main track of the ..... Railroad; thence easterly along said last named right of way line to the boundary line between ..... Counties; thence north along said county line to the southerly line of ..... County; thence easterly along the dividing line between ..... Counties to the easterly line of the right of way of the ..... Railroad; thence northerly along said right of way line to its intersection with the ..... Pike; thence westerly along said Pike to the center line of the bridge over ..... Creek; thence up said creek and along the center line thereof to the north line of ..... County; thence west to the place of beginning.

Or, if found more convenient, the lands sought to be included in the District may be described as follows:

All of Township ..... in Range ..... between the ..... Railroad and the ..... River; the following lands in ..... Township and ..... Range: Section ..... and the ..... half of Section .....; also all lands within the corporate limits of the City of ..... etc., etc., etc.

3. That a public hearing on said petition will be had in said court on ..... the ..... day of ....., at the hour of ..... o'clock ..... M. by the Court of Common Pleas of ..... County, at the Court House in the City of ....., County, Ohio.

All persons and public corporations owning or interested in real estate within the territory hereinbefore described will be given the opportunity to be heard at the time and place above specified.

.....  
*Clerk of the Court of Common Pleas of*  
*..... County, Ohio.*

Dated ....., Ohio, ....., 19....

2. *Form of Finding on Hearing.*

STATE OF OHIO, }  
 .....COUNTY, } ss

IN THE COURT OF COMMON PLEAS OF ..... COUNTY.  
 In Matter of

..... Conservancy District:

## FINDINGS AND DECREE ON HEARING.

On this ..... day of ....., 19...., this cause coming on for  
 upon the petition of ..... and others, for the organiza-  
 conservancy district under the Conservancy Act of the State of Ohio, the  
 after a full hearing now here find:

1. That it hath jurisdiction of the parties to, and the subject matter  
 proceeding.

2. That the purposes for which said district is established are:

[Insert the purposes.]

And that it is a public necessity.

3. That the public safety, health, convenience and welfare will be p  
 by the organization of a conservancy district substantially as prayed  
 petition, [if additional lands are added by petition] except, that the fo  
 additional lands at the petition of the owners thereof should be, and he  
 included in said district:

[Here insert additional lands.]

4. That the boundaries of said district as modified by the last findin  
 are as follows: [Here insert corrected boundaries of district.]

5. That the said territory last above described should be erected i  
 created a conservancy district under the Conservancy Act of the State  
 under the corporate name of ..... Conservancy Distri

Wherefore, it is by the Court ordered, adjudged, and decreed:

That the territory as above described be, and the same hereby is  
 into and created a conservancy district under the Conservancy Act o  
 under the corporate name of ..... Conservancy Distri  
 its office or principal place of business at ....., in .....  
 County, Ohio. [If directors are appointed at the same time.] And  
 lowing persons are hereby appointed directors of said conservancy distri

.....for the term of three years,

.....for the term of five years,

.....for the term of seven years,

who are hereby directed to qualify and proceed according to law.

6. For consideration of other matters herein, this cause is reta  
 the docket.

..... Ju

3. *Form of Notice to Property Owners to Pay Assessment:*  
 ..... CONSERVANCY DISTRICT.

**Forms and  
Sug-  
ges-  
tions**

*To All Persons Interested:*

*Public Notice Is Hereby Given:*

1. That on the ..... day of ....., 19...., the Board of Directors of ..... Conservancy District duly levied for the account of the Bond Fund of said District an assessment upon all the property in said District in the aggregate sum of ....., has caused the same to be extended upon the assessment duplicate of said District, and that said assessment duplicate is now in collection by the County Treasurer of the County in which the lands are situated.

2. That the entire assessment against any parcel of land may be paid at any time on or prior to ....., 19...., without costs and without interest.

3. That as soon after the ..... day of ....., 19...., as conveniently may be, the Board of Directors of said District will divide the uncollected portion of said assessment into convenient installments and will issue bonds bearing interest not exceeding six per cent. per annum in anticipation of the collection of the several installments of said assessment, pursuant to the Conservancy Act of the State of Ohio.

.....  
*President.*

.....  
*Secretary.*

4. *Form of Bond, and of Coupon.*  
 (FORM OF BOND.)

No. ....

\$.....

UNITED STATES OF AMERICA.  
 STATE OF OHIO

..... CONSERVANCY DISTRICT.

CONSERVANCY BOND.

KNOW ALL MEN BY THESE PRESENTS that ..... Conservancy District, a legally organized conservancy district of the State of Ohio, acknowledges itself to owe and for value received hereby promises to pay to bearer ..... Dollars (\$.....) on the first day of ....., 19...., with interest thereon from the date hereof until paid at the rate of ..... per cent. per annum, payable ....., 19...., and semi-annually thereafter on the first day of ..... and of ..... in each year on presentation and surrender of the annexed interest coupons as they severally become due. Both principal and interest of this bond are hereby made payable in lawful money of the United States of America, at the office of the Treasurer of the State of Ohio, in the City of Columbus, Ohio.

This bond is one of a series of bonds issued by ..... Conservancy District for the purpose of paying the cost of constructing a system of



**Forms and  
Sug-  
gestions**

flood prevention [or for other works] for said district and in anticipation of the collection of the several installments of an assessment duly levied upon lands within said district and benefited by said improvement in strict compliance with the Conservancy Act of Ohio, and pursuant to an order of the Board of Directors of said District duly made and entered of record.

And it is hereby certified and recited that all acts, conditions and things required to be done in locating and establishing said District and in equalizing appraisals of benefits and in levying assessments against lands benefited thereby, and in authorizing, executing and issuing this bond, have been legally had, done and performed in due form of law; that the total amount of bonds issued by said District does not exceed ninety (90) per cent. of the assessments so levied and unpaid at the time said bonds are issued or any legal limitation thereof.

And for the performance of all the covenants and stipulations of this bond and of the duties imposed by law upon said District for the collection of the principal and interest of said assessments and the application thereof to the payment of this bond and the interest thereon, and for the levying of such other and further assessments as are authorized by law and as may be required for the prompt payment of this bond and the interest thereon, the full faith, credit and resources of said ..... Conservancy District are hereby irrevocably pledged.

IN TESTIMONY WHEREOF the Board of Directors of ..... Conservancy District has caused this bond to be signed by its President and sealed with the corporate seal of said District, attested by its Secretary, and registered by the State Treasurer of the State of Ohio, and the coupons hereto annexed to be executed by the fac-simile signatures of said President and Secretary, as of the ..... day of ....., 19.....

.....  
*President.*

Attest:

.....  
*Secretary.*

(FORM OF COUPON.)

\$.....

On the first day of { ..... } 19.....

Conservancy District promises to pay to bearer ..... Dollars (\$.....) lawful money of the United States of America, at the office of the Treasurer of the State of Ohio, Columbus, Ohio, being semi-annual interest due on that date on its Conservancy Bond dated ..... 19.....

No.....

.....  
*President.*

.....  
*Secretary.*



5. *Form of Notice of Enlargement of District.***Forms and  
Sug-  
gestions**

STATE OF OHIO, }  
COUNTY OF....., } ss

IN THE COURT OF COMMON PLEAS.  
..... County, Ohio.

In the Matter of

..... Conservancy District.

## NOTICE OF ENLARGEMENT OF DISTRICT.

To All Persons [and Public Corporations, if Any] Interested:

PUBLIC NOTICE IS HEREBY GIVEN:

1. That heretofore on the ..... day of ....., 19...., the Court of Common Pleas of ..... County, Ohio, duly entered a final decree erecting and creating ..... Conservancy District and appointing a Board of Directors therefor.

2. That thereafter this Court duly appointed

.....  
.....  
.....

to be the Board of Appraisers for said District. That said Board of Appraisers on the ..... day of ....., 19...., filed their report recommending that the following described lands, not originally included in the District, be added thereto:

[Here describe generally the lands which the Report of the Board of Appraisers recommends should be added to the District.]

3. That on ....., the ..... day of ....., 19...., (or as soon thereafter as the convenience of the Court will permit) at the Court House in ..... of ....., Ohio, the Court of Common Pleas of ..... County, Ohio, will hear all persons and public corporations, who are owners of or interested in the property described in this notice upon the question whether said lands should be added to and included in said ..... Conservancy District.

.....  
*Clerk of the Court of Common Pleas  
of ..... County, Ohio.*

6. *Form of Notice of Hearing on Appraisals.*

STATE OF OHIO, }  
COUNTY OF..... } SS

IN THE COURT OF COMMON PLEAS,  
..... COUNTY, OHIO.

In the Matter of }  
..... }  
Conservancy District }

## NOTICE OF HEARING ON APPRAISALS.

*To All Persons and Public Corporations Interested:*

PUBLIC NOTICE IS HEREBY GIVEN:

1. That heretofore on the ..... day of ....., 19...., the Court of Common Pleas of ..... County, Ohio, duly entered a decree, erecting and creating ..... Conservancy District and appointing a Board of Directors therefor.

2. That thereafter this Court duly appointed

.....  
.....  
.....

the Board of Appraisers for said District. That said Board of Appraisers on the ..... day of ....., 19...., filed their Appraisal of Benefits and Damages and of land to be taken as follows:—[Here insert general description of land appraised.]

The said appraisal of benefits and damages and of land to be taken is now on file in the office of the clerk of this Court.

3. All public corporations and all persons, owners of or interested in the property described in said Report, whether as benefited property or as property taken and damaged (whether said taken or damaged property lies within or without said district), desiring to contest the appraisals as made and returned by the Board of Appraisers, must file their objections in said court on or before the ..... day of ....., 19...., [here insert a date ten (10) days after the last publication of the notice] and a hearing on said appraisal will be had on the ..... day of ....., 19...., [here insert a date not less than twenty (20), nor more than thirty (30), days after the date of the last publication of this notice, as fixed by the court] in the City of ..... Ohio, at which time an opportunity will be afforded all objectors to be heard upon their several objections.

.....  
*Clerk of the Court of Common Pleas*  
*of ..... County, Ohio..*

Dated at the City of ..... Ohio, this ..... day of ..... 19....

## 7. Form of Certificate of Levy of Assessments.

Forms and  
Sug-  
ges-  
tions

STATE OF OHIO, }  
COUNTY OF..... } ss

To the Auditor of ..... County, Ohio:

This is to certify that by virtue and under the authority of THE CONSERVANCY ACT OF OHIO, the Board of Directors of ..... Conservancy District have and do hereby levy the sum of ..... Dollars for the account of the BOND FUND of said District, which said assessment bears interest as provided by law and is payable in installments as follows: [Here insert.]

You are further notified that for the account of the MAINTENANCE FUND for the year 19.... this Board has levied the sum of ..... Dollars.

The amounts of said levies upon the several parcels of land upon which the same are imposed are set forth upon the schedule hereunto attached, marked ..... Conservancy Assessment Book. The said assessments shall be collectable and payable the present year in the sums therein specified at the same time that the state and county taxes are due and collectable, and you are directed and ordered to require the Treasurer of ..... County, Ohio, to demand and collect such assessments at the time that he demands and collects the state and county taxes due on the same lands, and this Conservancy Assessment Book shall be your authority and the authority of the Treasurer to make such collection.

WITNESS the signature of the President of said Board of Directors, attested by the seal of said corporation, and the signature of its Secretary, this ..... day of ....., 19....

.....  
President.

.....  
Secretary.

## XI. EMERGENCY

SECTION 79. EMERGENCY ACT. This act is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and safety. Such necessity exists by reason of the inadequacy of the present drainage systems of the state to carry off unusual rainfalls in a proper and safe manner, as shown by the disastrous floods of March, 1913, which may occur again at any time in the near future with a like unfortunate result in loss of life and property. The existing laws of the state are not adequate to meet this emergency.

Therefore, this act shall take effect from and after its passage and approval.

Passed February 5th, 1914.

Approved February 17th, 1914.

JAMES M. COX,  
Governor.

Filed in the office of the Secretary of State, February 17th, 1914.

Section  
6828-79

Emergency act.

The sectional  
numbers  
herein are in  
conformity to  
the General  
Code.

TIMOTHY S.  
HOGAN,  
Attorney  
General.

## MEMORANDUM FOR THE MIAMI CONSERVANCY DISTRICT

June 28, 1915—District established—Case No. 36847. Court of Common Pleas of Montgomery County, Ohio.

December 15, 1914—Membership of Conservancy Court and power to establish districts held constitutional. Appeal void. Snyder et al. v. Deeds et al., 91 O. S. 407.

June 4, 1915—Law held constitutional—complete opinion. County of Miami et al. v. City of Dayton et al. 92 O. S. 215-237.

May 10, 1916—Official Plan adopted by directors.

November 24, 1916—Official Plan approved by court.

May 9, 1917—Appraisal record filed.

June 18, 1917—Hearing on appraisal record.

July 30, 1917—Final entry approving appraisal record.

Aug. 9, 1917—Law held constitutional by U. S. District Court S. D. Ohio W. D. Judges Warrington (Circuit Judge) Hollister and Cochran (District Judges) No. 134 Orr vs. Allen et al. Directors of The Miami Conservancy District.

Sept. 5, 1917—Assessment Record Filed.

September 15, 1917—Advertised for bids for contracts.

November 15, 1917—Bids to be opened.

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